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#### Restriction is a prohibition on an ACTION – the aff must prohibit indefinite detention

Northglenn 11 (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content\_11-5.html)

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, the term "restriction" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and no such use, activity, operation, building, structure or thing shall be authorized by any permit or license.

#### War powers are the authority to use military force—not the means or tactics.

Waxman 13—Matthew Waxman is a law professor at Columbia Law School, where he co-chairs the Roger Hertog Program on Law and National Security [August 27, 2013, “The Constitutional Power to Threaten War,” http://www.lawfareblog.com/2013/08/the-constitutional-power-to-threaten-war/#.UsSTavRDveo]

As to the constitutional issues, there is wide agreement among legal scholars on the general historical saga of American war powers – by which I mean here the authority to use military force, and not the specific means or tactics by which war is waged once initiated – though there remains intense disagreement about whether this is an optimistic or pessimistic story from the perspective of constitutional values and protection of American interests. Generally speaking, the story goes like this: The Founders placed decisions whether actively to engage in military hostilities in Congress’s hands, and Presidents mostly (but not always) respected this allocation for the first century and a half of our history. At least by the Cold War, however, Presidents began exercising this power unilaterally in a much wider set of cases, and Congress mostly allowed them to; an effort to realign legislatively the allocation after the Vietnam War failed, and today the President has a very free hand in using military force that does not rise to the level of “war” (in constitutional terms, which is usually confined to large-scale and long-duration uses of ground forces). From a functional standpoint, this dramatic shift in constitutional power is seen as either good, because decisions to use force require policy dexterity inherent in the presidency, or bad, because unilateral presidential decisions to use force are more prone than congressionally-checked ones to be dangerously rash.

#### Authority over indefinite detention is the authority TO DETAIN

GLAZIER 6 Associate Professor at Loyola Law School in Los Angeles, California [David Glazier, ARTICLE: FULL AND FAIR BY WHAT MEASURE?: IDENTIFYING THE INTERNATIONAL LAW REGULATING MILITARY COMMISSION PROCEDURE, Boston University International Law Journal, Spring, 2006, 24 B.U. Int'l L.J. 55]

President Bush's decision to consider the terrorist attacks of September 11, 2001, as an act of war has significant legal ramifications. Endorsed by Congress in the Authorization for the Use of Military Force ("AUMF"), n1 this paradigm shift away from treating terrorism as a crime to treating terrorism as an armed conflict allows the United States to exercise "fundamental incidents of waging war." n2 Among these fundamental war powers are the authorities to detain enemy personnel for the duration of hostilities, to subject law of war violators to trials in military tribunals, and to exercise subject matter jurisdiction over the full scope of the law of war, rather than over only those offenses defined in U.S. criminal statutes. n3

#### Violation—the affirmative mandates that detainees get trials, the don’t restrict indefinite detention

#### Impact—limits and ground. They are able to get out of core circumvention and interbranch conflict DA’s because they are just enforcing an already existing restriction. Makes link uniqueness for DA’s impossible.

### 1NC DA 1

#### 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.

### 1NC DA 2

#### Momentum preventing sanctions – Obama’s capital is key

WEBER 1 – 30 – 14 senior editor at TheWeek.com [Peter Weber, What sank the Senate's Iran sanctions bill? After Obama's State of the Union speech, it looks like Democrats are going to give peace a chance, after all, <http://theweek.com/article/index/255771/what-sank-the-senates-iran-sanctions-bill>]

In mid-January it appeared that a bipartisan Senate bill threatening Iran with new sanctions was a foregone conclusion. Yes, President Obama opposed the legislation and promised to veto it, but supporters of the Nuclear Weapon Free Iran Act strongly hinted that they had a veto-proof majority — and with 59 senators (43 Republicans and 16 Democrats) co-sponsoring the bill, that seemed eminently plausible.

They would only need eight more votes (and action in the House) to thwart Obama's veto pen, and momentum appeared to be on their side.

If there is any momentum on the bill now, it's on the other side. Obama reiterated his veto threat in the very public setting of his State of the Union address on Tuesday night, saying that "for the sake of our national security, we must give diplomacy a chance to succeed." Jan. 20 marked the beginning of a six-month period of negotiations between the U.S., Iran, and five other world powers aimed at preventing Iran from developing a nuclear bomb.

The negotiations won't be easy, and "any long-term deal we agree to must be based on verifiable action," not trust, Obama said. But "if John F. Kennedy and Ronald Reagan could negotiate with the Soviet Union, then surely a strong and confident America can negotiate with less powerful adversaries today."

After the speech, at least four Democratic cosponsors — Sens. Chris Coons (Del.), Kirsten Gillibrand (N.Y.), Joe Manchin (W.Va.), and Ben Cardin (Md.) — said they didn't want to vote on the bill while negotiations are ongoing. Sen. Richard Blumenthal (D-Conn.) had already adopted that position earlier in the month.

The distance these cosponsors put between themselves and the bill wasn't uniform. Cardin punted to Sen. Harry Reid (D-Nev.), who is opposed to bringing the bill to the floor for a vote. (Cardin "wants to see negotiations with Iran succeed," a spokeswoman's said. "As for timing of the bill, it is and has always been up to the Majority Leader.")

Manchin, on the other hand, told MSNBC that he didn't sign on to the bill "with the intention that it would ever be voted upon or used upon while we were negotiating," but rather "to make sure the president had a hammer if he needed it." He added: "We've got to give peace a chance here."

With the list of Democratic cosponsors willing to vote for the bill shrinking by five, the dream of a veto-proof majority in the next six months appears to be dead. Even Republican supporters of the legislation are pessimistic of its chances: "Is there support to override a veto?" Sen. Jim Inhofe (R-Okla.), the top Republican on the Senate Armed Services Committee, told National Journal on Wednesday. "I say, 'No.'"

So, what happened to the Iran sanctions bill? The short version: Time, pressure, and journalism.

The journalism category encompasses two points: First, reporters actually read the legislation, and it doesn't quite match up with the claims of lead sponsors Sen. Robert Menendez (D-N.J.) and Sen. Mark Kirk (R-Ill.), who say the sanctions would only take effect if Iran was found to be negotiating in bad faith. A much-cited analysis by Edward Levine at the Center for Arms Control and Non-Proliferation showed that the Iran sanctions would kick in unless Obama certified a list of impossible or deal-breaking conditions.

Journalists also started asking the cosponsors about their intentions. It's possible there were never 59 votes for the bill, but the legislation was filed right before Christmas and many reporters (not unreasonably) conflated cosponsorship with support for the bill, regardless of what was happening with the negotiations. They only asked on Tuesday night and Wednesday because Obama brought up the issue in his State of the Union speech.

Time without action always saps momentum, but with the Iran sanctions bill it also allowed events to catch up with the proponents of new sanctions. When they filed the bill Dec. 20, the interim Iran deal was just a talking point; a month later it was reality. The Obama administration, U.S. intelligence community, and outside analysts agree that new sanctions would scuttle the deal, and its harder to take that risk when that deal is in effect.

Finally, critics of the bill — including the White House and J Street, the liberal pro-Israel lobbying group — had time to mount a counterattack. Starting Jan. 6, J Street and other groups opposed to the legislation "reached out to senators who were on the fence and senators who'd cosponsored on day one," says Slate's David Weigel. "The message was the same: Have you guys read this thing?" Dylan William, J Street's director of government relations, describes the strategy in more depth:

We made especially prodigious use of our grass tops activists. These are people who have longstanding relationships with members of Congress to express two things. One: The bill is bad policy. Two: There was no political reason that these senators should feel they need to support the bill. There is deep political support in communities for members of Congress and senators who want to reserve this peaceably. [Slate]

So take a bow, J Street — for now, the David of the Israel lobby has slain its Goliath, the American Israel Public Affairs Committee (AIPAC), which is pushing for the legislation. That could all change if the interim Iran deal falls apart or some other event intercedes to change the equation for lawmakers. But momentum is hard to un-stall, and lawmakers are now considering changing the bill into a non-binding resolution.

John Judis at The New Republic is relieved, and counts Obama's veto threat Tuesday night as the boldest part of his speech. "If these negotiations with Iran fail, the United States will be left with very unsatisfactory alternatives," he writes:

Use military force to stop Iran, which might only delay Iran's acquisition of nuclear weapons, and will potentially inflame the region in a new war, or allow Iran to go ahead and hope to contain Iran as we have contained other potentially hostile nuclear powers. Obama may not be able to secure authorization for the first alternative... and if he opts for the second, he will leave open the possibility of regional proliferation or of Israel going to war against Iran. It's in America's interest — and, incidentally, Israel's as well — to allow the current negotiations to take their course — without malignant interference from Congress and AIPAC. [New Republic]

#### Plan destroys Obama which causes internal Democrat defection

Loomis 07 Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University [Dr. Andrew J. Loomis, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

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

#### Court restrictions make Obama look like a loser

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.

#### New sanctions ensure war

Kearn 1/19—David W. Kearn, Assistant Professor, St. John’s University [“The Folly of New Iran Sanctions” 01/19/2014, Huffington Post, http://www.huffingtonpost.com/david-w-kearn/the-folly-of-new-iran-san\_b\_4619522.html]

While the momentum seems to have stalled, the movement in the United States Senate this week to pass a bill raising new sanctions on Iran threatened to undermine the negotiations for a long-term, comprehensive solution to the nuclear issue, just as the interim agreement negotiated in Geneva is planned to go into effect. What was particularly unusual was the bipartisan nature of the support for a bill. Led by Senate Foreign Relations Committee Chairman Robert Menendez (D-NJ), as many as sixteen Democratic Senators had cosponsored the bill, moving it close to a 60-vote "filibuster proof" margin, which (after likely passage in the House) would force a veto by President Obama.

The timing of the legislation is curious because of the delicate nature of the negotiations and the ongoing diplomacy between the United States and its partners and Iran. Hardliners on all sides are skeptical of any deals, but unlike past negotiations, the stakes this time seem much higher. Well-meaning intentions aside, any legislation that precipitates an Iranian walkout and a collapse of the negotiations will likely be viewed by friends and adversaries alike as a major failure by the United States. However, unlike past instances, the probability of war has significantly increased.

This is no longer a debate about the relative merits of allowing Iran to acquire a functional nuclear weapon capability or the capacity to rapidly construct and deploy several bombs (often called a "breakout" capacity). Various experts have considered the probability of Tehran achieving a nuclear weapon and assessed the implications for regional and global security. More optimistic observers conclude that Iran could be contained by the United States and its allies, and deterred from ever using its weapons. As evidence, they cite the acquisition of nuclear weapons by Stalin's Soviet Union, Mao's China, India and Pakistan, two nations locked in an intense historical rivalry, and North Korea. Despite the limited proliferation of nuclear weapons -- nowhere near that predicted in the 1960s -- nuclear weapons have not been used. If indeed Iran has designs for a nuclear weapon, these experts argue it most likely to deter outside actors like the United States or Israel from removing the regime.

More pessimistic observers disagree and take much less comfort in the history of proliferation. The historical record, including the evidence of risky crisis-initiation behavior between the two Superpowers paints a less sanguine picture. More importantly, looking at the modern Middle East, an Iranian bomb would potentially transform regional security dynamics. Given the region's geography and its particular vulnerability to nuclear attack, Israel (an undeclared nuclear power) would be on high-alert for any Iranian move. Other actors like Saudi Arabia may seek to acquire their own nuclear deterrent, leading to further proliferation within a region which is already flush with radical terrorist organizations operating across various troubled states. It seems implausible that Tehran's leaders could ever believe that the delivery of a nuclear weapon on Israeli soil by Hezbollah, rather than missile would somehow go unattributed or unpunished, but the introduction of an Iranian nuclear weapons program into a region that is already so tumultuous conjures particularly grim scenarios.

Nonetheless, this debate has effectively been made moot by official U.S. and Israeli policies. The clear commitment of the Obama administration to thwart Tehran from acquiring a nuclear weapon has been in place for some time. Containment is not an option, and military force will ostensibly be used to prevent an Iranian nuclear weapon from becoming operational. Despite this commitment, the Israeli government has consistently expressed its willingness to act alone to stop an Iranian bomb even without U.S. support. While hardliners in Tel Aviv and Washington may not agree, these are both credible threats that the regime in Tehran must take seriously. Thus, the situation confronting Iran and the world is either the peaceful negotiated solution to the nuclear question, or the high likelihood of another destructive, costly war in a region already torn apart by conflict.

The current sanctions bill in the Senate is not about providing President Obama and Secretary Kerry with greater leverage in the negotiations. The Iranian delegation has made clear that it views any such sanctions as an indication of bad faith that will wreck the process and undo any progress made to this point. With the interim agreement set to go into effect next week, this is clearly not the time for the Senate to usurp the authority of the commander-in-chief and his chief diplomat. Taking their respective rationales at face value, the Democratic members of the Senate supporting the sanctions legislation may have good intentions to provide a stronger "bad cop" to Secretary Kerry's "good cop" in Geneva. This is short-sighted. New sanctions will not only play into the narrative of hard-liners in Iran who don't want agreement, it will also isolate the United States from its negotiating partners and likely cripple the cohesive united front that has seemingly emerged throughout the talks. In doing so, it is most likely to fulfill the wishes of hardliners in Israel and the United States that simply don't want an agreement and refuse to take any "yes" for an answer. However, with a failure of negotiations, military conflict is much more likely.

#### That escalates to World War III

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

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

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

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

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

### Circumvention

#### 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

#### Obama will disregard the Court. He is on record denying Court authority over indefinite detention

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).

#### President will nullify the decision. Court legitimacy is at risk

Fallon 9—Professor of Law @ Harvard Law School [Richard H. Fallon, Jr., “Article: Constitutional Constraints,” California Law Review, 97 Calif. L. Rev. 975, August 2009]

1. Inefficacy or Nullity Under Applicable Rules of Recognition

Judges and justices are constrained by the prospect that some decisions they might imaginably render would be treated as nullities or otherwise prove inefficacious. n189 While some rules of recognition tell justices how to identify valid law, others, applicable to other officials, characteristically direct those other officials to accept judicial interpretations as binding—even when those other officials think the judges made mistakes. n190 But there are limits. For example, as I have said before, a judicial directive purporting to raise or lower interest rates solely for policy reasons would not be recognized as legally authoritative. n191

This conclusion may appear trivial, but I do not believe that it is. As Fred Schauer has documented, the Supreme Court's docket typically includes few of the issues that most American regard as most pressing. n192 Matters of war and peace, economic boom and bust, and priorities in the provision of public services seldom come within the province of judicial decision-making. In light of familiar assumptions that unchecked power tends to expand, n193 we might ask why this is so. Part of the answer lies in the justices' awareness of external constraints.

 [\*1016]  As a historical matter, the prospect of judicial pronouncements being treated as nullities or otherwise proving inefficacious is hardly hypothetical. n194 President Thomas Jefferson and Secretary of State James Madison credibly threatened to defy the Supreme Court if it awarded mandamus relief to William Marbury in Marbury v. Madison. n195 Abraham Lincoln directed his subordinates to ignore the ruling of Chief Justice Taney in Ex parte Merryman. n196

Another example may come from the World War II case of Ex parte Quirin, n197 in which the Court upheld executive authority to try alleged Nazi saboteurs before military tribunals rather than civilian courts. n198 While the case was pending, President Franklin D. Roosevelt made it known to the justices that if they ruled for the petitioners, he would order military trials and summary executions to proceed anyway. n199 In the wartime circumstances, military personnel would almost certainly have obeyed presidential orders to ignore a judicial ruling—a consideration that may well have affected the Court's decision to uphold the constitutionality of military trials. n200 The Court may also have framed its famous order that local schools boards should enforce the rights recognized in Brown v. Board of Education n201 "with all deliberate speed," n202 rather than posthaste, partly because it knew that a mandate of immediate desegregation might have proved inefficacious. n203

 [\*1017]  Without attempting to account systematically for all possible external constraints that arise from the prospect that judicial rulings might be null under the rules of recognition practiced by nonjudicial officials, or might otherwise provoke defiance, I offer three observations.

First, in cases in which the justices worry that executive officials or lower courts might defy their rulings, they may feel a tension between the direct normative constraints and the external constraints to which they are subject. In other words, they may believe that they have a legal duty to do what they may feel externally constrained from doing. In Quirin, for example, the justices might easily have believed that at least one of the alleged saboteurs—a U.S. citizen who had been apprehended within the United States—had a constitutional right to civilian trial. n204

As I noted above, however, it also seems plausible that in a case such as Quirin, external constraints might affect the justices' perceptions of their legal duties. For example, in reflecting upon precedents such as Marbury v. Madison n205 and Stuart v. Laird, n206 in which the Court bowed to political threats, the justices may have concluded that the "rule of recognition" authorizes them to avoid rulings that would likely provoke broadly supported defiance and thereby threaten the long-or short-term authority of the judicial branch. As I have written elsewhere:
Looking at the Supreme Court's long-term pattern of decisions, I would surmise that the Justices have internalized the constraint that the Court must conduct itself in ways that the public will accept as lawful and practically tolerable ... : the Court's interpretations of the Constitution must be likely to be accepted and enforced by at least a critical mass of the officials normally counted on to implement judicial decisions, and they should not trigger a strong and enduring sense of mass outrage by political majorities that the Court has overstepped its constitutional powers. n207
 [\*1018]  Second, while assent to judicial mandates is today the norm, and official defiance of court rulings the exception, some observers believe that nonjudicial officials should feel freer than they presently do to treat judicial rulings as not binding on them. In a much discussed book, Larry Kramer has argued that nonjudicial officials once regarded themselves as being entitled as judges to interpret the Constitution, even after the courts had spoken, and to treat judicial rulings as limited to the particular cases in which they were issued or even to ignore them. n208 Whatever historical practice may have been, the recognition practices of nonjudicial officials could change in the future, with official defiance of judicial rulings becoming more common. n209 The external constraints on judges and justices are thus potential variables.

Third, if we ask why elected officials, in particular, currently accede so readily to claims of judicial authority that are not clearly ultra vires, part of the answer can be traced to the external constraint that public expectations impose. The public expects governmental officials to obey the law, and the public has been socialized to believe that judicial interpretations are legally binding. n210 But reference to current norms only postpones the question of how a state of affairs developed in which judicial authority to resolve disputable constitutional questions is so widely accepted.

In addressing this question, it is just as important to recognize that the domain of recognized judicial authority is bounded—that there are some issues committed almost wholly to resolution by politically accountable officials—as it is to note that judicial authority is seldom seriously questioned within its sphere. In accounting for these phenomena, political scientists increasingly argue that the domain within which the Court possesses recognized authority is politically "constructed." n211 With respect to the kinds of issues concerning which the courts speak authoritatively, elected officials prefer that the courts do speak authoritatively. n212 Maintenance of a relatively independent judiciary within a limited sphere may be the preferred strategy of risk-averse political leaders who willingly forego some opportunities to exercise power while they  [\*1019]  hold office in order to prevent unbounded power by their political adversaries when the adversaries triumph at the polls. n213 Perhaps of even greater significance, politicians may find it to their electoral advantage to leave a range of contentious issues for judicial resolution. n214 Congress and the president may also be happy to see dominant national visions enforced against the states n215 and to delegate to the courts a number of issues possessing low political salience. n216

If political scientists are correct that the domain of judicial authority is politically constructed, however, there is no guarantee that the political forces that define that domain will remain in long-term equilibrium. From the perspective of some political scientists, every election is a potential external shock to the system. n217 Keith Whittington advances the more architectonic thesis that, from time to time, "reconstructive" presidents have confronted the Supreme Court, sometimes successfully, and have forced a redefinition of the substantive bounds within which acceptable judicial decision-making can occur. n218 According to Professor Whittington, Thomas Jefferson, Andrew Jackson, Abraham Lincoln, and Franklin Roosevelt all achieved this effect to greater or lesser degrees. n219 They did so partly by persuading the public to accept their visions of constitutional meaning and partly, having prevailed in the court of public opinion, by appointing justices who shared their constitutional visions. Thus, to take the starkest example, the prevailing constitutional understandings that emerged from the Roosevelt Revolution of the 1930s—in the country as well as on the Court—differed vastly from those of the 1920s, and the principal engine driving the change was Franklin Roosevelt. n220

 [\*1020]  In order for external constraints to be effective, judges and justices need not respond to them self-consciously, "for the constitutional understandings shared by those affiliated" with the dominant political coalition or "regime"—including jurists who have been nominated and confirmed with their constitutional visions in mind—"will be entrenched and assumed." n221 Nevertheless, the external constraints that define the domain of politically acceptable judicial action can exert important influence as parts of the process through which current and future judges identify and internalize legal norms. As Thomas Keck puts it, "The justices' ostensibly political preferences have themselves been constituted in part by legal ideas, and those legal ideas, in turn, have been derived in large part from ongoing debates in the broader political system." n222

2. Concurrent Agreement or Acquiescence Requirements
 The Supreme Court "is a they, not an it." n223 In considering constraints on the Court as an institution, it is easy to forget that the Court is comprised of nine justices, each of whom is constrained individually by the need to secure the agreement of at least four colleagues in order to render legally efficacious constitutional rulings. n224 Judges of courts of appeals are similarly constrained by the need to muster majority support for their conclusions. Unlike Supreme Court justices, lower court judges are of course further constrained by the Supreme Court's power to reverse their decisions. n225

 [\*1021]  As I have noted, nonjudicial officials can defy or refuse to implement judicial decisions. Indeed, they have sometimes done so. n226 The courts, however, are virtually never constrained by the need to earn the formal approval or acquiescence of officials in another branch in order to act with the authority of law. The reason, I would speculate, is that the Constitution is written, and surrounding norms and expectations have developed, on the hypothesis that the judiciary is the least dangerous branch. n227 If the judiciary is assumed to be relatively impotent to inflict affirmative damage, and if the other branches are more threatening, it may be more desirable to preserve an efficacious checking power for the judiciary than to establish concurrent agreement or acquiescence requirements as formal checks against judicial action.

Having said this, I hasten to add that there may be circumstances under which the exercise of a judicial negative does indeed do affirmative harm—for example, if the Court unwisely invalidates legislation that would further important public interests or protect moral rights. n228 Perceptions that the Court has done so partly explain some of the instances in which "reconstructive" presidents—including Abraham Lincoln and Franklin Roosevelt—have mounted successful attacks on previously prevailing visions of appropriate judicial authority under the Constitution. n229

3. Sanctions
The Constitution insulates the Supreme Court, as it does all federal judges, against certain kinds of sanctions. The justices cannot be removed from office during good behavior, nor can Congress reduce their salaries. n230 All judges, justices included, also enjoy immunity from suits for civil damages based on their official acts. n231

Despite these safeguards of judicial independence, the Constitution provides for some sanctions against Supreme Court justices. Most formally and conspicuously, justices can be impeached and removed from office. n232 They are  [\*1022]  also subject to the criminal law, including its prohibitions against bribery and extortion.

Less formally, justices confront the possibility of sanctioning by their colleagues. If the justices thought one of their number to be reckless or cavalier in her constitutional judgments, they could deprive the wayward colleague of the privilege of speaking authoritatively for the Court simply by refusing to join her opinions. Or they could vote to rehear any case in which that colleague cast the decisive vote—as apparently happened with the aged William O. Douglas. n233 The justices' capacity to write opinions exposing their colleagues' constitutionally faithless reasoning (if such were ever to occur), and thus to hold up offenders to contempt or ridicule, may also qualify as a constitutionally authorized, albeit informal, sanction. n234

Beyond the sanctions available against Supreme Court justices, the Constitution provides mechanisms for the imposition of institutional sanctions, directed not against individual justices but the Court as a whole. The Constitution permits Congress to withdraw at least some cases from the Court's jurisdiction. n235 If so minded, Congress and the president could also "pack" the Court and thereby not only reduce the power of incumbent justices, but also diminish the Court's prestige. n236

Lower federal court judges are vulnerable to virtually the same sanctions as Supreme Court justices, but with one conspicuous addition. Unlike the justices, lower court judges are subject to being reversed, and potentially to being upbraided, on appeal. n237

 [\*1023]  Insofar as threats of sanctions function as a constraint on judicial action, their directive force could sometimes create a tension with applicable normative constraints. n238 This prospect appears most visibly in the case of state judges, who may incur electoral or other political sanctions if their decisions displease a majority of voters. n239 But it is at least imaginable that an irate or partisan Congress might sanction federal judges by impeaching them and removing them from office for rendering unpopular but legally correct decisions. n240

This possibility—which exemplifies the age-old dilemma of who should guard the guardians—is almost surely an unhappy one. But the threat has seldom if ever come to fruition. There are at least three lessons to be drawn.

First, nonjudicial actors within the American political system, including the public, have largely internalized a norm against attempts to interfere with the exercise of independent judgment by the federal judiciary, and especially the Supreme Court. Early in American constitutional history, the Jeffersonian Republicans threatened to impeach judges as an instrument of ideological discipline, but the effort foundered before it gained momentum. n241 More than a century later, when Franklin Roosevelt sought authority to "pack" a Supreme Court that had appeared poised to scuttle hugely popular New Deal policies, Congress and public opinion rallied against the president. n242 Similarly, although members of Congress have recurrently introduced legislation that would curb the authority of the federal courts to rule on controversial issues, n243 such proposals have generally collapsed in the face of protests that they would violate the Constitution's spirit if not its letter. n244

 [\*1024]  Second, as I have noted already, other powerful political actors have good reasons to wish to maintain a relatively powerful, relatively independent judiciary. n245 Granted, "reconstructive" presidents have sometimes sought to challenge the prevailing ideologically inflected assumptions through which the Constitution has predominantly come to be viewed. But even reconstructive presidents and their normal allies have either had normative compunctions about subjecting the Supreme Court to significant sanctions or have encountered external resistance when they attempted to do so.

Third, saying that the sanctioning of federal judges and especially the Supreme Court has occurred infrequently is different from saying that the prospect of sanctions has had no effect. As I have noted, judicial decision-making in the United States has long exhibited a streak of prudentialism, through which the Court has avoided not only particular decisions that might provoke defiance, but also broader patterns of rulings that could arouse political majorities to impose sanctions. n246 Although I would stop considerably short of Judge Richard Posner's conclusion that "constitutional law is a function ... of ideology" checked principally if not exclusively by the justices' "awareness, conscious or unconscious, that they cannot go "too far' without inviting reprisals by the other branches of government spurred on by an indignant public," n247 it seems only commonsensical to assume that sanctions or other external constraints have some effect.

#### 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

#### Weakening the court prevents sustainable development

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

#### 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.

Drone Shift

#### Turn—Restricting detention increases the use of drones

Gartenstein-Ross 12—Daveed Gartenstein-Ross, J.D. from NYU School of Law, is the Director of the Center for the Study of Terrorist Radicalization at the Foundation for Defense of Democracies, a Washington-based think tank. He frequently consults on counter-terrorism for various government agencies as well as the private sector [Dec 4 2012, “Gitmo's Troubling Afterlife: The Global Consequences of U.S. Detention Policy,” http://www.theatlantic.com/international/archive/2012/12/gitmos-troubling-afterlife-the-global-consequences-of-us-detention-policy/265862/]

One option, of course, is ending preventive detention entirely, which is favored by many of Obama's critics on the left. But that carries second-order consequences of its own, since al Qaeda has not ended its fight against the United States, nor is the broader problem of violent non-state actors going to disappear. If the U.S. doesn't employ preventive detention, doesn't this create a perverse incentive for killing rather than capturing the opponent? As Wittes writes, "The increasing prevalence of kill operations rather than captures is probably not altogether unrelated to the fundamental change in the incentive structure facing our fighters and covert operatives."

Moreover, if the U.S. tries to wash its hands of preventive detention, detainees will almost certainly end up in worse conditions as a result. The idea has seemingly taken hold that because detention of violent non-state actors by Western governments is unjustifiable and immoral, "local" detention is preferable. So, for example, the United States supported recent military efforts by African Union, Somali, and Ke

nyan forces to push back the al Qaeda-aligned Shabaab militant group in southern Somalia. The U.S. did not take the lead in detaining enemy fighters, and instead its Somali allies did so. But when one compares, say, detention conditions in Somalia to those in Gitmo, the latter is far more humane. If the U.S. and other Western countries eschew detention when fighting violent non-state actors, somebody is going to have to do it, and that alternative is almost certainly going to be worse for the detainees themselves.

What these second-order consequences point to is the fact that reform of U.S. detention policy is more vital than moving detainees to other facilities. William Lietzau, the deputy assistant secretary of defense for rule of law and detainee policy, has told me that the detention of violent non-state actors is an unsettled area of law. To Lietzau, defined and developed rules govern the prosecution of criminals, while the Geneva Conventions govern detention of privileged belligerents under the law of war. But for unprivileged belligerents, such as violent non-state actors, the applicable law is largely undefined. Lietzau has even designed a chart, which has become famous among his colleagues, illustrating the law's lack of development.

This is not to say that moving detainees from Guantánamo to the continental United States is necessarily a bad idea. One could argue that removing that symbol is important. Further, in the long run, moving the detainees may actually save money, since everything at Gitmo, from food to construction materials, must be imported at high cost. But the location of the detention does not address any substantive concerns.

Though it will not be easy, working with partners like the International Committee of the Red Cross to forge a better set of principles and procedures governing the detention of unprivileged belligerents is far more important than moving the Gitmo detainees elsewhere. Put simply, violent non-state actors will continue to challenge the nation-state, so nation-states need a way to deal with detention in this context. Our current policy of pretending that we have moved past noncriminal detention all but ensures we will be caught flat-footed the next time such detention is necessary in a large scale, and thus that the problems inherent to detaining unprivileged belligerents will have gone unaddressed.

#### That kills allied coop—their author concedes

Tom Parker, 9/17/2012. Former Policy Director for Terrorism, Counterterrorism and Human Rights at Amnesty International. U.S. Tactics Threaten NATO, nationalinterest.org/commentary/us-tactics-threaten-nato-7461

A growing chasm in operational practice is opening up between the United States and its allies in NATO. This rift is putting the Atlantic alliance at risk. Yet no one in Washington seems to be paying attention.

The escalating use of unmanned aerial vehicles to strike terrorist suspects in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, **coupled with the continued use of military commissions and indefinite detention**, is driving a wedge between the United States and its allies.

AT: EU Coop

#### Snowden is an alt cause to EU cooperation

**Stokes 12/5**/13 - Director of global economic attitudes at the Pew Research Center [Bruce Stokes “NSA Spying: A Threat to US Interests?,” YaleGlobal, 5 December 2013, pg. http://yaleglobal.yale.edu/content/nsa-spying-threat-us-interests

WASHINGTON: Revelations by Edward Snowden of US National Security Agency spying have exposed both similarities and differences in public attitudes toward privacy among Europeans and Americans. Both publics value privacy, but Americans, more so than most Europeans, appear willing to sacrifice privacy in the name of security. These differences pose potential challenges to the ongoing free trade discussions between the European Union and the United States, the Transatlantic Trade and Investment Partnership, where new rules governing the digital economy could prove central to a final agreement.

Americans have conflicting views about NSA activities done in their name. They suggest that the National Security Agency may have gone too far in spying on US allies. They also think that the NSA has intruded on Americans' personal privacy in scooping up massive amounts of private phone calls and emails. But, in the pursuit of terrorists, a majority will still trade their personal privacy for greater security.

Such differences have raised new doubts in Europe about the United States. German Chancellor Angela Merkel recently told members of the German parliament that US spying “must be explained and more importantly new trust must be built up for the future.” And, while it’s too early to know the lasting impact of the Snowden affair on transatlantic relations, Europeans’ perceptions of the United States, especially as a stalwart defender of individual freedom, may face new strains.

A recent survey by the Pew Research Center found that 56 percent of Americans said it is unacceptable for the United States to monitor the phone calls of the leaders of allied nations, including Merkel. Just 36 percent said it is a tolerable practice.

American wariness of NSA activities may, in part, reflect concern about a possible invasion of their own privacy. In a mid-July Washington Post-ABC News survey, 49 percent said they thought that the NSA surveillance program intruded on their personal privacy rights. And 74 percent said it infringed on some Americans' privacy, if not their own.

Nevertheless, when asked to balance security worries against privacy concerns, Americans opt for security. In that same Washington Post-ABC News poll, 57 percent felt that it was important for the federal government to investigate terrorist threats, even if it intrudes on personal freedom. Just 39 percent said that the government should not intrude on personal privacy, even if it limits the government’s ability to investigate possible terrorist threats.

There has been little cross-national polling of European views on the NSA affair. And the questions are often worded differently or conducted with differing methodologies, so that comparisons between polling findings are more illustrative than definitive. But what has been done suggests notable differences with American viewpoints and some broad similarities.

Like Americans, Europeans appear to be worried about personal privacy. They do not think that national security concerns warrant an invasion of their privacy. Majorities in Germany (70 percent), France (52 percent) and Sweden (52 percent) think that their own government would not be justified in collecting the telephone and internet data of its citizens as part an effort to protect national security, according to a survey done by TNS Opinion for the German Marshall Fund of the United States. A substantial minority, or 44 percent, of people in the United Kingdom agree. In this survey, 54 percent of Americans surveyed suggested that such activity would go too far in violating citizens' privacy and is therefore not justified.

Another difference emerged in this survey between American and European attitudes toward spying on one’s allies. Publics on both sides of the Atlantic think national security is no justification for action, but it’s a sentiment held more strongly by some Europeans than by Americans. A strong majority of Germans (72 percent) and more than half the French and the Swedes (each 55 percent) did not think that national governments are justified in collecting telephone and internet data of citizens in other allied countries even as part of an effort to protect national security, according to the TNS/GMF survey. More British, 43 percent, thought it was unjustified than saw it as justified, 30 percent. Notably, American attitudes resembled those of the British – 44 percent unjustified, 33 percent justified.

The exposure of NSA spying has had an impact on America's image abroad, especially in Europe.

In spring 2013, before extensive revelations of NSA activities, a median of 62 percent in five European Union nations – Britain, France, Germany, Poland and Spain – had a favorable view of the United States, according to a Pew Research Center survey. That included 76 percent for Italians, 64 percent for the French and 53 percent for Germans.

That median was already in decline, down from 67 percent in 2009. It’s unclear whether the NSA affair will accelerate that erosion or prove a minor bump in the road in transatlantic relations. But there are some early warning signs. A recent poll by the German public broadcaster, ARD and the German daily Die Welt, found that only 35 percent of Germans consider the US government to be trustworthy.

Moreover, the US government's respect for individual liberty has long been a strong suit of American public diplomacy. Even in many nations where opposition to US foreign policy is widespread and where overall ratings for the United States are low, majorities or pluralities maintained that the country respects individual rights.

In the 2013 Pew Research Center survey, a median of 70 percent of people in 39 nations thought the United States government respected the personal freedoms of its people. In contrast, a median of only 36 percent saw China protecting individual liberties.

This view of America as a resolute defender of civil rights was particularly strong in Europe: Italy (82 percent), Germany (81 percent), France (80 percent) and Spain (69 percent). Positive views of Uncle Sam's record had risen by 20 points in Spain, 15 in France and 11 in Germany since 2008. But these are now the countries where some of the public outcry against NSA spying has been loudest.

So Americans are of two minds about recent allegations of NSA surveillance of phone and email communications. They worry about its impact on international relations and their own privacy. But that concern continues to be trumped by an ongoing anxiety about terrorism. Europeans similarly share concerns about spying’s impact on privacy, but they generally do not think national security concerns are more important than privacy.

These differences are already playing out in the negotiations over the Transatlantic Trade and Investment Partnership. Some European officials have called for a pause in the talks in response to the Snowden revelations. That is unlikely. But NSA spying has revived European concerns about who owns data generated by individual consumers through their credit card purchases, internet searches and the like – and what private companies can and cannot do with that data. Some European privacy advocates would like to ban the cross-border transfer of such data. But many companies, especially data-intensive American firms like Google and Facebook, and even companies like General Electric, claim that the business model of the new digital economy is built on the ability to amass and analyze large sets of data. They argue that quarantining such information within national borders will deny future generations many of the economic benefits to be gained from big data.

The transatlantic disagreement over NSA intrusion into personal privacy is not simply a national security issue, it now has business implications.

#### One policy change will not reverse the course. This is a deep and fundamental rights issue for Europe

**UPI 12/20**/13 [United Press International, “Restoring lost trust may take many years: Germany,” Dec. 20, 2013 at 1:42 PM, pg. http://www.upi.com/Top\_News/Special/2013/12/20/Restoring-lost-trust-may-take-many-years-Germany/UPI-99901387564931/

BERLIN, Dec. 20 (UPI) -- Restoring trans-Atlantic trust lost as a result of spying controversies may take some time to repair, new German Foreign Minister Frank-Walter Steinmeier said as he took over from Guido Westerwelle.

"The Transatlantic Alliance is and remains the backbone of our security," Steinmeier said, addressing a Foreign Ministry gathering. But a lot has changed recently and much cannot be taken for granted, he added.

"Despite all placations citing the Western community of shared values, trust has been lost and it will require a great deal of joint effort to restore it," he added.

"Today we are confronted with the question of how we can reconcile freedom and security in a digitally connected world and in light of new threats that have indeed arisen. We must make it clear to our American friends that not everything that is technically possible is politically wise. And this goes far beyond the question of whether spying among friends is permissible or not.

"It also begs the question of how can we ensure that our citizens' fundamental right to privacy remains intact in the 21st century, against a fully transformed communications backdrop. How can we prevent the technical and legal fragmentation of the World Wide Web, on which a large part of our increasing prosperity is based?

"This trust will not be regained overnight, but we will work hard to restore it," Steinmeier said.

He said the transatlantic relationship "is currently under considerable strain -- Iraq war, Guantanamo, [U.S. secrets leaker Edward] Snowden, NSA [National Security Agency] are the words that come to mind in that context."

AT: Intel Coop Now

#### 1) Intel sharing collapsing now

Tom Parker 12, Former Policy Dir. for Terrorism, Counterterrorism and H. Rts. at Amnesty International, U.S. Tactics Threaten NATO, September 17, http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461

The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans.

The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not.

The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States.

AT: N/UQ—Non US Coop / Intel

#### Intel coop is useless

Hartung 13 (Farina Hartung Master Thesis International and European Relations, Linköping University , “Case-study of NATO: Is NATO a redundant international organization or not?”, http://www.liu.se/utbildning/pabyggnad/F7MME/student/courses/733a27masterthesis/filarkiv/spring-2013/theses-june/1.464731/MasterThesisFinalVersionFarinaHartung.pdf)

The United States believes strongly in two commitments: First, the belief in law and second, in the use of force (O’Connell 188). This train of thought was clearly visible when the United States started the war against Iraq because of the potential weapons of mass destruction in Iraq. The entire world was able to see that the United States remain as one of the most powerful military states in the world to this day. Even though NATO is a military alliance and is made up of twenty-eight member states, the U.S. still has the most influence within this international organization.

According to O’Connell, the existence of NATO is evident because at this time point in time, the United States’ belief in military force is stronger than the commitment of states to the rule of law (188). It seems that even in today’s world, it is rather important to still have a strong focus on military power than to trust the rule of law (O’Connell 189). The United States is one country which was founded by the use of force, and therefore many people believe that the Nation’s goals can only be achieved with the use of force (Ibid).

As the frontrunner of NATO, the United States has reserved a place at the head of the most powerful collection of militaries on earth, the reason for NATOs continuing existence (O’Connell 195). The United States has not lead go of the need to be the dominant military power. O’Connell claims that this dominance will continue within NATO (195). Furthermore, she argues that the United States even try to give NATO different tasks, so that there is no reason to dissolve this international organization (Ibid). But even if the United States give NATO new task just so that they can stay in business, it is still questionable if that is really the right way to go.

The United States’ influence will not diminish that much is clear. According to Snyder, the Europeans enjoy the certain “freedom of the irresponsible”, as the United States will not withdraw its ultimate protection which allows them to ease their own preferences or make ego-bolstering “Euro-gestures” (121). Equally, the United States has the “freedom of the powerful” which means that they are free to worry about its allies defecting on the base of either probability or cost because it can safely take unilateral initiatives that the Europeans deplore (Ibid). This certainly cannot be the right way to deal with all members in the alliance. If the United States take actions or act on regard of the whole alliance, there must be a way of getting along with each other. The United States should not be the country that just wants to play the card of being the most powerful member, and therefore claiming that they may have more rights than others.

1NC Not Effective

NATO is redundant—other international organizations solve—NATO only creates free-riding and lowers over-all security

Hartung 13 (Farina Hartung, Master Thesis International and European Relations, Linköping University, “Case-study of NATO: Is NATO a redundant international organization or not?”, http://www.liu.se/utbildning/pabyggnad/F7MME/student/courses/733a27masterthesis/filarkiv/spring-2013/theses-june/1.464731/MasterThesisFinalVersionFarinaHartung.pdf)

Just as mentioned above, NATO has gone through a process of changes since it was first established. It can be said that the changes where necessary or as a matter of fact that they were not - it always depends on the view one takes. The position of this paper has been stated before that it is going to investigate the question if NATO is redundant and to show proof that it is. As history has shown, it can be argued that the organization is redundant and has survived much longer passed its due time. From this point of view, it can be argued that this is what hurts the organization; they need to reform before they have a chance to act.

It is quite difficult to claim that NATO is not redundant, but as mentioned before, this Thesis will take a look at the opposite side of this claim. Instead of trying to prove that NATO is needed, I will try to show that it is not needed and has long surpassed its duty. That has become clear over the past years. NATO has reformed itself in order to ensure that it will stay relevant enough in order to play an impacting role in politics and international relations. Although they have taken the initiative to stay relevant, they seem to have failed. There have been different voices, such as Theo Sommer and Kenneth Waltz, who claim and argue that NATO is as a matter of fact redundant.

One could always ask what is redundancy and how can it be measured. Redundancy is not self-evident, and it also cannot really be defined. Neither can redundancy be measured. Redundancy is what one makes out of it and what others understand of redundancy is left open for discussion. But in regards to this paper, redundancy is just the fact that NATO is not really needed any longer. The task it is currently doing, such as the peacekeeping, can be done by other international organizations, such as the United Nations There is no longer the need for just one international organization to have its sole focus and propose on collective security. Security is something that is desired by so many countries and there is no need that NATO needs to be the one organization that will provide this to all the countries in the world. And as mentioned before, NATO already goes outside its territorial borders in order to provide security to the world (“NATO in the 21st Century).

NATO is a redundant international organization simply because it has lost its endeavor. It strives to do so much in order to provide its member states with the necessary certainty that in case of a threat, there is a whole community that will act and protect each member state. But how should NATO really do that in reality? The member states have cut down their size of military they have. In time of great danger, one country might not want to act because there could be a conflict of interests. Currently, there is just not such a big threat as the Soviet Union was that there needs to be a military alliance. In case that such a great threat rises to the surface again, it is just simply as easy to create a new international military organization which can then function according to the actual needs, because it is always during the time of threat that new alliances are created.

As mentioned above, the main purpose of NATO has vanished when the Cold War was over and the Soviet Union ceased to exist. Since the Cold War and the threat that the Soviet Union posed so close to European borders dissolved in the beginning of the 1990s, NATO just has lost its main function. According to Theo Sommer, NATO has ever since then been in a constant stage of “transformation”, never really knowing what it should achieve and what its goal is (17). In addition to that, one could argue that NATO is facing more problems that seem to have come along with the problem of the lacking threat.

This Thesis argues that NATO is neither necessary to fulfill a defensive function or that of providing security for its members. NATO is an international organization that is in fact no longer permissible. It has surpassed its life expectancy by many years. Moreover, it can be said that since it has surpassed its reason of existence, it will step down from the position it holds in regards of an international security organization. It is no longer the main focus of the member states. NATO should also no longer be the main focus. Other organizations have emerged over the past decades that show that they are able to do the necessary work without having to go through a process of transformation. For example regional international organization, such as the European Union could take over this task, since most of the members are located on the European continent to begin with. Furthermore, it can be claimed that NATO should be able to see that they are no longer fit for modern times. Before NATO is able to act on any kind of problem or concern, it has to go through a process of transforming itself; otherwise, it might not be able to act. This point of view may seem a bit exaggerated; however, it is suitable for NATO since it is pragmatic. NATO is not the same since the end of the Cold War. It can be said that the main reason why the NATO was established was to be able to encounter the Soviet Union in a time of crisis. According to Lindley-French, NATO today is a strategic and defensive focal point that can project both military and partnership power worldwide (89). She continuous her argument by noting that the job the alliance has to done is the same as ever and has not changed (Ibid). The job of the alliance has always been to safeguard the freedom and security of its member nations through political and security needs, instituted by the values of “democracy, liberty, rule of law and the peaceful resolution to disputes” (Ibid). Yet another point he claims is that NATO provides a strategic forum for consultation between North Americans and Europeans on security issues of common concern and the facility for taking joint action to deal with them (Ibid).

To repeat, NATO has lost its power and maybe even its standpoint in the modern day time politics. There are many different international organizations that all could take over the work of NATO or even could continue it in a better manner than NATO is currently doing. Claiming that NATO is not redundant just does not seem to follow the actual fact of the position that NATO is currently in. They have missed indeed the point where it was time to either dissolve the whole international organization or the time to reform which would have actually created positive outcomes. The latter point, however, seems impossible now. It just is impossible for NATO to change yet again. In the time of its existence, NATO has undergone so many different changes and reforms, altogether a total of six. There is just no logical reason why NATO is able to successfully undergo another process of changes and transformation. New reforms always bring changes and if they actually will help NATO is left in the open.

As Theo Sommer puts it, NATO has served its time simply because the world has changed (9). The threats are no longer the same and to some extend may not even exist anymore. There are of course new threats, such as terrorism, piracy, and cyber-attacks, now that have emerged and rose to the surface of international politics. However, those are not really the same as they were when NATO was created. Hence, NATO is not suitable to tackle new issues and problems. They can try to reform, but it will never be the same because NATO itself will have to adjust to the new situation. But this is not what this once great military alliance was intended to do.

### 1NC No Model

#### US courts aren’t a human rights model

**Liptak 8**—Adam Liptak, J.D. from Yale, is the Supreme Court correspondent for The New York Times [“U.S. Court Is Now Guiding Fewer Nations,” The New York Times, September 18, 2008, http://tinyurl.com/c2dw7jz]

WASHINGTON — Judges around the world have long looked to the decisions of the United States Supreme Court for guidance, citing and often following them in hundreds of their own rulings since the Second World War.

But now American legal influence is waning. Even as a debate continues in the court over whether its decisions should ever cite foreign law, a diminishing number of foreign courts seem to pay attention to the writings of American justices.

“One of our great exports used to be constitutional law,” said Anne-Marie Slaughter, the dean of the Woodrow Wilson School of Public and International Affairs at Princeton. “We are losing one of the greatest bully pulpits we have ever had.”

From 1990 through 2002, for instance, the Canadian Supreme Court cited decisions of the United States Supreme Court about a dozen times a year, an analysis by The New York Times found. In the six years since, the annual citation rate has fallen by half, to about six.

Australian state supreme courts cited American decisions 208 times in 1995, according to a recent study by Russell Smyth, an Australian economist. By 2005, the number had fallen to 72.

The story is similar around the globe, legal experts say, particularly in cases involving human rights. These days, foreign courts in developed democracies often cite the rulings of the European Court of Human Rights in cases concerning equality, liberty and prohibitions against cruel treatment, said Harold Hongju Koh, the dean of the Yale Law School. In those areas, Dean Koh said, “they tend not to look to the rulings of the U.S. Supreme Court.”

The rise of new and sophisticated constitutional courts elsewhere is one reason for the Supreme Court’s fading influence, legal experts said. The new courts are, moreover, generally more liberal than the Rehnquist and Roberts courts and for that reason more inclined to cite one another.

Another reason is the diminished reputation of the United States in some parts of the world, which experts here and abroad said is in part a consequence of the Bush administration’s unpopularity around the world. Foreign courts are less apt to justify their decisions with citations to cases from a nation unpopular with their domestic audience.

“It’s not surprising, given our foreign policy in the last decade or so, that American influence should be declining,” said Thomas Ginsburg, who teaches comparative and international law at the University of Chicago.

Aversion to Foreign Law

The adamant opposition of some Supreme Court justices to the citation of foreign law in their own opinions also plays a role, some foreign judges say.

“Most justices of the United States Supreme Court do not cite foreign case law in their judgments,” Aharon Barak, then the chief justice of the Supreme Court of Israel, wrote in the Harvard Law Review in 2002. “They fail to make use of an important source of inspiration, one that enriches legal thinking, makes law more creative, and strengthens the democratic ties and foundations of different legal systems.”

Partly as a consequence, Chief Justice Barak wrote, the United States Supreme Court “is losing the central role it once had among courts in modern democracies.”

Justice Michael Kirby of the High Court of Australia said that his court no longer confined itself to considering English, Canadian and American law. “Now we will take information from the Supreme Court of India, or the Court of Appeal of New Zealand, or the Constitutional Court of South Africa,” he said in an interview published in 2001 in The Green Bag, a legal journal. “America” he added, “is in danger of becoming something of a legal backwater.”

### 1NC No Backsliding

#### No empirical evidence for backsliding

Wolfgang Merkel, March 2010. Department of Democracy Research, Social Science Research Center, Berlin; and Department of Political Science, Humboldt University, Berlin, Germany. “Are dictatorships returning? Revisiting the ‘democratic rollback’ hypothesis,” Contemporary Politics 16.1, http://www.wzb.eu/sites/default/files/personen/merkel.wolfgang.289/contemporary-politics2010-merkel.pdf.

Since 2007 an increasing number of articles have diagnosed ‘freedom in retreat’ and predicted a ‘return to the authoritarian great powers’. Highly distinguished scholars warn against the ‘democratic rollback’, and articles on the resilience of authoritarian regimes have appeared in the best journals of political science. Is the tide of democratization turning, and do we have to expect a new reverse wave of autocratization? This article argues that **there is no hard empirical evidence that we are witnessing a trend towards re-autocratization** on a global scale. The optimism of the early 1990s of a seemingly irresistible trend towards democracy is partially due to an empirical artefact caused by inappropriate underlying theoretical concepts. The overestimation of human agency and political crafting on the one side and underestimation of structural impediments for democracy on the other side contributed to this optimism, as did the thin concept of ‘electoral democracy’ or teleological speculation about the end of history. Democratic rollback does not seem to be as widespread as is sometimes claimed.

### 1NC No Backsliding (Diamond)

#### Diamond’s data doesn’t support the conclusion—no evidence of backsliding now.

Wolfgang Merkel, March 2010. Department of Democracy Research, Social Science Research Center, Berlin; and Department of Political Science, Humboldt University, Berlin, Germany. “Are dictatorships returning? Revisiting the ‘democratic rollback’ hypothesis,” Contemporary Politics 16.1, http://www.wzb.eu/sites/default/files/personen/merkel.wolfgang.289/contemporary-politics2010-merkel.pdf.

Diagnosis of the present

Do the pessimists’ arguments hold water? Can they be empirically grounded or even serve for extrapolation to a clearly autocratic counter-movement, a counter-movement that will now follow the third, most intensive wave of democratization in the twentieth century (Table 1)? Initially, events appeared to side with the optimists. The number of countries with ‘electoral democracies’ increased steadily: from 39 in 1974 to 76 in 1990, to a startling 99 in 1992, and, in 1996, Freedom House counted a new record of 118 states which met the minimum conditions for an electoral democracy. Although followed by a period of relative stagnation and slight ﬂuctuations, the number—at least as recorded in the optimistic calculations by Freedom House—had risen to an absolute high-water mark of 123 formally democratic countries by the year 2006. However, this does not obscure the fact that the phase from 1996 to 2006 is to be described as a period of stagnation. By the mid-1990s, the twentieth century’s third wave of democratization had deﬁnitively spent itself. The calculations of Freedom House in three successive years, 2006–2009, arrived at a slight abatement of electoral-democratic regimes. In addition, Freedom House, in the sub-scores underlying its index, also ﬁnds a mild deterioration in the democratic quality of the political regimes studied. However, **this abatement is neither long nor distinct enough to allow us to speak of a trend on the basis of these ﬁgures** 3 (Table 2).

‘Minimum abatement’ also cannot be extrapolated to a trend, much less a counter-movement, by analysing the development not only of electoral but also of liberal democracies. Here too, the changes are only minimal and **do not by any means constitute an authoritarian trend**.

A study of political regimes according to Freedom House’s threefold division of ‘free’, ‘partly free’ and ‘not free’ **contradicts Freedom House’s own claim on the basis of its ﬁgures**: not even a minimal trend toward autocratization can be found. The number of free countries continued to increase in 2000 and, after 2005, remained at a historic high-water mark. ‘Partly free’ regimes continued to proliferate above the 2000 and 2005 levels and are now at their highest level since 1975. Furthermore, ‘non-free’ countries alone have continuously diminished in number since 1975, reaching their lowest number in history with 42 autocratic (‘not free’) regimes in the year 2009. The thesis that democracy is on the wane worldwide or even that an autocratic///

 counter-movement is gaining momentum is untenable in view of these numbers, **which are used by Diamond**, Puddington, and their colleagues (Table 3).

## \*\*\* 2NC

### Overview

#### DA outweighs and turns everything—we deter every conflict—speed and planning are the lynchpins of deterrence—need to send an absolute signal that we can and will quickly get involved to deter aggression to prevent escalation

GERSON 9—research analyst in the Strategic Initiatives Group [Michael S. Gerson, “Conventional Deterrence in the Second Nuclear Age,” Parameters, US Army War College Quarterly, Autumn, http://www.carlisle.army.mil/usawc/parameters/Articles/09autumn/gerson.pdf]

This article seeks to expand the current debate about the role and utility of conventional forces in US deterrence strategies by reexamining the traditional logic of conventional deterrence, which focuses on deterrence by denial, in the context of the modern international security environment. It is primarily concerned with the role of US conventional forces in extended deterrence, defined as the threat of force to protect allies and friends, rather than “central” or “homeland” deterrence. 3 This focus on extended deterrence—and especially on the role of deterrence by denial in extended deterrence—highlights the central importance of protecting territory from attack and invasion. Historically, the desire for control over specific territory has been a frequent motivator of interstate crises and conflict. 4 While interstate conventional wars have significantly declined since the end of the Second World War, the potential for conflict over Taiwan or on the Korean Peninsula, the prospect of future clashes over control of scarce natural resources, and the 2008 war between Georgia and Russia attest to the continued possibility of conflict over specific territory that has important strategic, economic, political, religious, historical, or socio-cultural significance. Consequently, this article examines how US conventional military power can be used to deter conventional aggression against friends and allies by threatening to deny an adversary its best chance of success on the battlefield—a surprise or short-notice attack with little or no engagement with American military forces. The ability to prevent an opponent from presenting the United States with a fait accompli—that is, from striking quickly and achieving victory before substantial US (and perhaps coalition) forces can be deployed to the theater—is a central component of modern conventional deterrence.

Conventional Deterrence in US Strategy

Broadly defined, deterrence is the threat of force intended to convince a potential aggressor not to undertake a particular action because the costs will be unacceptable or the probability of success extremely low. This threat has always been one of the central strategic principles by which nations attempted to prevent conflict. 5 Even so, the development and rigorous analysis of deterrence as a discrete strategic concept did not occur until the advent of nuclear weapons. Deterrence theory was developed against the backdrop of the Cold War nuclear arms race and focused on the prevention of nuclear conflict. Yet, while the majority of academic research and public debate was concerned with the prevention of nuclear war—the net result was that deterrence became synonymous with nuclear weapons—conventional deterrence, appropriately, assumed an increasingly important role in the development of military strategy during this period. 6 As the Soviet Union began to amass a large and survivable nuclear arsenal that was capable of global reach in the late 1950s and early 1960s, the credibility of the Eisenhower Administration’s policy of “Massive Retaliation,” which threatened an overwhelming nuclear response to virtually any Soviet aggression, was brought into question. Once the Soviet Union developed survivable nuclear capabilities that could reach the US homeland, many defense officials and analysts argued that the threat of Massive Retaliation lacked credibility against anything other than an all-out Soviet nuclear attack. 7 As a result, western military strategy eventually shifted from total reliance on nuclear weapons as a means of deterring both Soviet conventional and nuclear aggression to a strategy of “Flexible Response,” which included conventional and nuclear elements. From the mid-1960s onward, NATO relied on conventional power, backed by the threat of nuclear escalation, to deter any conventional assault on Europe by the numerically superior Warsaw Pact, and relied on nuclear weapons to deter nuclear attacks. 8 By incorporating “direct defense”—the ability to respond to Warsaw Pact aggression, especially conventional aggression, with proportionate (i.e., conventional) force—into NATO strategy, the concept of Flexible Response sought to create a more credible means of deterrence across the entire spectrum of conflict Following the Cold War, conventional greater role in US national security strategy. With the demise of the Soviet Union and significant advancements in conventional precision-guided munitions, many defense analysts concluded that “smart” weapons could provide a powerful deterrent against a wide variety of threats. While some commentators argued that nuclear weapons were still necessary to prevent nuclear attacks, and others contended that conventional weapons were “the only credible deterrent” even against nuclear threats, almost all agreed that technologically advanced conventional weapons could now take the place of nuclear weapons in many missions. 9

Following the remarkable success of sophisticated conventional firepower in Operation Desert Storm, William Perry declared, “This new conventional military capability adds a powerful dimension to the ability of the United States to deter war.” 10 In the current international security environment, conventional deterrence can be useful against nonnuclear and nuclear-armed adversaries. For regimes that do not possess nuclear, chemical, or biological weapons, US conventional capabilities will likely be the most credible and potent deterrent. History suggests that, in general, nations without weapons of mass destruction (WMD) are not intimidated by an opponent’s nuclear capabilities. For example, nuclear weapons did not give the United States significant advantages before or during the Korean and Vietnam wars; nor did they dissuade Egypt from attacking Israel in the 1973 Yom Kippur War 11 or Argentina from attacking the British-controlled Falkland Islands in 1982. 12 This circumstance is due in part to the perceived impact of the “nuclear taboo,” a moral and political aversion to using nuclear weapons that has emerged due to the long absence of nuclear use in time of war. The nuclear taboo reduces the credibility—and therefore the utility—of nuclear weapons, especially against regimes not possessing nuclear weapons or other WMD. 13 Although implicit or explicit nuclear threats may lack credibility against non-WMD regimes, many potential adversaries believe that the United States will use conventional firepower, especially because America has conventional superiority and a demonstrated willingness to use it. Consequently, when dealing with non-WMD-related threats, conventional deterrence will be the most likely mechanism for deterring hostile actions. 36

Parameters

According to Admiral Michael Mullen, the current Chairman of the Joint Chiefs of Staff, “A big part of credibility, of course, lies in our conventional capability. The capability to project power globally and conduct effective theater-level operations . . . remains essential to deterrence effectiveness.” 14 Conventional deterrence also plays an important role in preventing nonnuclear aggression by nuclear-armed regimes. Regional nuclear proliferation may not only increase the chances for the use of nuclear weapons, but, equally important, the possibility of conventional aggression. The potential for conventional conflict under the shadow of mutual nuclear deterrence was a perennial concern throughout the Cold War, and that scenario is still relevant. A nuclear-armed adversary may be emboldened to use conventional force against US friends and allies, or to sponsor terrorism, in the belief that its nuclear capabilities give it an effective deterrent against US retaliation or intervention. 15 For example, a regime might calculate that it could undertake conventional aggression against a neighbor and, after achieving a relatively quick victory, issue implicit or explicit nuclear threats in the expectation that the United States (and perhaps coalition partners) would choose not to get involved. In this context, conventional deterrence can be an important mechanism to limit options for regional aggression below the nuclear threshold. By deploying robust conventional forces in and around the theater of potential conflict, the United States can credibly signal that it can respond to conventional aggression at the outset, and therefore the opponent cannot hope to simultaneously achieve a quick conventional victory and use nuclear threats to deter US involvement. Moreover, if the United States can convince an opponent that US forces will be engaged at the beginning of hostilities—and will therefore incur the human and financial costs of war from the start—it can help persuade opponents that the United States would be highly resolved to fight even in the face of nuclear threats because American blood and treasure would have already been expended. 16 Similar to the Cold War, the deployment of conventional power in the region, combined with significant nuclear capabilities and escalation dominance, can help prevent regimes from believing that nuclear possession provides opportunities for conventional aggression and coercion.

#### AND—err our way—Executive expertise means they’ll make the best cost-benefit analysis for you

POSNER & SUNSTEIN 7—\*Eric A. Posner, Kirkland & Ellis Professor of Law, University of Chicago AND \*\*Cass R. Sunstein, Karl N. Llewellyn Distinguished Service Professor of Jurisprudence, University of Chicago [“Chevronizing Foreign Relations Law,” The Yale Law Journal, April, 2007, 116 Yale L.J. 1170]

Our minimal suggestion here is that in cases in which the executive has adopted an interpretation via rulemaking or adjudication, or is otherwise entitled to deference under standard principles of administrative law, the executive's interpretations should prevail over the comity doctrines. Those doctrines, we argue, should not be treated as part of the court's analysis under Chevron Step One. It follows that courts should defer to the executive's judgment unless it is plainly inconsistent with the statute, unreasonable, or constitutionally questionable. The executive is in the best position to reconcile the competing interests at stake, and in the face of statutory silence or ambiguity, Congress should therefore be presumed to have delegated interpretive power to the executive. If the executive decides that the statute should be interpreted so as to overcome the comity principles, it ought to be [\*1205] permitted to interpret the statute in that way. There is no reason to distrust the executive's competence in making the underlying choices.

Beyond this minimal suggestion, we contend that in the domain of foreign relations, the approach signaled in Chevron should apply even if the executive is not exercising delegated authority to make rules or conduct adjudications. It is highly relevant here that considerations of constitutional structure argue strongly in favor of deference to the executive—a point that makes the argument for deference stronger than in Chevron itself. For those who reject this contention, we suggest that the level of deference signaled by the Court's decision in Mead provides the proper standard—and that Skidmore deference, even if weaker, confers a measure of authority on the executive.

Our basic conclusions follow from the grounds for the international comity principles. We have criticized the entanglement theory, but even if the theory is right, the executive branch, unlike the judiciary, is in a good position to know whether concerns about entanglement justify a decision to invoke comity. If the executive is not worried about entanglement, and if Congress has expressed no such worry through legislation, the argument for deference to the executive is strong. Litigation produces entanglement problems when the decision on the merits is likely to offend a foreign sovereign, perhaps leading it to withdraw cooperation in some area of foreign relations that is vital to America's interests. The court has no expertise in determining whether a certain kind of litigation will offend a foreign sovereign, whether the sovereign is likely to respond by reducing cooperation, or whether such cooperation is valuable. These judgments are all at the core of the foreign relations expertise of the executive.

Now consider the consequentialist theory. The underlying inquiries required by this theory are highly complex and have empirical and normative dimensions, for which the executive's institutional position gives it a decisive advantage over the courts—even more so than under the entanglement theory. Two points are important here.

First, the executive branch carefully tracks relations with foreign states. Thus it is in a better position to predict whether a particular act of deference to foreign interests is likely to result in reciprocation by foreign states or whether such states would retaliate for a violation of the comity principles. The prediction is based on subtle factors—including the nature of the relationship with the foreign state, the cultural norms of that state, its legal system and other institutions, its politics, and so forth. These are factors followed and assessed by the Department of State. They are well beyond the usual kind of judicial fact-finding.

It follows that the executive branch is in a better position to understand the benefits of foreign reciprocation or the likelihood and costs of retaliation than the judiciary. Suppose, for example, that in response to litigation against China [\*1206] by Chinese victims of state repression, China begins to issue vague threats against Taiwan. Are these threats credible? Are they meant to signal that China will take a more confrontational stance toward Taiwan if the United States allows Chinese citizens to sue China for human rights violations? Or do they perhaps signal a general chilling of relations, in which case the United States may have more trouble obtaining Chinese assistance in pressuring Iran to abandon its nuclear plans? Courts cannot answer these questions; the executive can.

The second point involves accountability. In deciding whether American law should be applied abroad, or whether a statute should be construed in conformance with international law, the executive must balance competing interests and make value judgments. It must ask questions not only about reciprocity and retaliation, but also about the importance of applying, say, the National Labor Relations Act to protect Americans aboard a foreign ship in American waters, or the ban on sex discrimination to American companies doing business in China, or the Endangered Species Act to the activities of American institutions operating in Japan. n114 At least at first glance, those judgments should be made by those who are accountable to the public, not by courts. The executive might well pay a price if it concluded that American civil rights or environmental law ought not be applied to American activities in other nations. As in the Chevron context, the executive is far more likely than a court to be punished by the public if it causes or fails to resolve tensions with other countries or a foreign policy crisis. Indeed, although courts routinely anger foreign sovereigns, n115 we cannot think of any case in which the public has put pressure on courts because of such crises—probably because the connection between judicial decisions and international tensions is not salient enough.

The flip side of accountability is concern about political bias. n116 Because courts are independent, they may be more neutral than the executive, and thus perhaps more likely to interpret the statute impartially. But this concern is identical in the Chevron context in which, as we noted, courts have plausibly concluded that the executive's control over policy justifies its heightened [\*1207] authority over the interpretation of statutes. In any case, judges may have biases of their own. Any relevant "bias" on the part of the executive in the domain of foreign affairs is best understood as the operation of democracy in action—at least if the executive's interpretation is reasonable and if constitutionally sensitive issues are not involved.

Thus, the expertise rationale for deference to the executive is stronger in the foreign relations setting than in the traditional Chevron setting, while the accountability rationale for deference is at least equally strong. These conclusions suggest that if the approach in Chevron is correct, deference to executive interpretations in foreign relations cases must also be the appropriate approach. The core reason is that resolution of statutory ambiguities involves judgments of policy, and those judgments are best made by the executive. None of this means that courts have no relevant expertise. Courts might have a better sense than the executive of how enforcement of foreign judgments may harm the integrity of the American judicial system. But this advantage is relatively minor compared to the advantages of the executive.

What we have said so far also applies when statutes and common law are relatively clear—i.e., outside the Chevron setting—if the executive branch argues that the court should dismiss the case rather than reach the merits. Here, to be sure, there is a greater danger of conflict between the executive and Congress, but Congress has not objected to the traditional doctrines of executive deference, and until it does so, the constitutional problems seem more theoretical than real. n117 The normative question is whether the executive's institutional expertise gives it advantages over courts in this setting as it does in the Chevron setting, and the answer is surely yes. In both cases, the argument for deference to the executive is that it has more expertise than the courts in foreign relations and that the executive's accountability for foreign relations is more important than the courts' independence from political pressure. n118

### AT: Legitimacy I/L

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

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

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

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

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

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

### 2NC/1NR UQ Wall

#### AND—the status quo hasn’t met a threshold of ending general deference—rhetoric has been tough BUT no authority has been removed.

ZEISBERG 12—University of Michigan, Ann Arbor [Mariah Zeisberg, BOOK REVIEW: POWER AND CONSTRAINT: THE ACCOUNTABLE PRESIDENCY AFTER 9/11, Winter, 2012, Tulsa Law Review, 48 Tulsa L. Rev. 195]

Goldsmith's investigation into the robustness of presidential constraint is also underdeveloped in places. When comparing Presidents Bush and Obama, Goldsmith insists that despite its "rhetoric" of presidential power, the Obama administration's policy outputs are strikingly similar to those of the late Bush presidency. n32 But when analyzing judicial checks, Goldsmith takes rhetoric at face value. This is a problem because, however bold the Court's rhetoric in the Hamdi, n33 Padilla, n34 Rasul, n35 Hamdan, n36 and Boumedienne n37 cases, the Court was highly deferential on the concrete policy outcomes these rulings would require from the government. n38 Kim Scheppele argues that by ruling in favor of petitioners' habeas rights, but repeatedly deferring the question of what the content of those rights amounted to, the Supreme Court created a new and insidious form of judicial deference. n39 The courts after 9/11 were "very active, right from the start ... .[But] what does it mean to keep winning cases if nothing in fact changes?" n40 It is unclear to what extent these judicial interventions should be construed as "constraining." Goldsmith's book could have illuminated that question had it offered a more thoughtful and consistent standard on the question of whether rhetoric, or only policy, is a notable political outcome.

### Flex Links

#### Restrictions on detention kill exec flex—key to prevent terrorism

Tomatz 13—Michael, Colonel, B.A., University of Houston, J.D., University of Texas, LL.M., The Army Judge Advocate General Legal Center and School (2002); serves as the Chief of Operations and Information Operations Law in the Pentagon. AND Colonel Lindsey O. Graham B.A., University of South Carolina, J.D., University of South Carolina, serves as the Senior Individual Mobilization Augmentee to The Judge Advocate Senior United States Senator from South Carolina [“NDAA 2012: CONGRESS AND CONSENSUS ON ENEMY DETENTION,” 69 A.F. L. Rev. 1]

Reading the tea leaves of judicial dicta may be fraught with difficulty, but one certainly discerns from these pragmatic guidelines a view that the Executive should be accorded reasonable deference in matters of preventive detention. This deference is strongest during the early phases of detention, when facts are unclear, when the risks of release are acute, and the dangers of substituting a judicial judgment for that of the military or the Commander-in-Chief is greatest. If the Government learns that al-Qaeda operatives have invaded the U.S. bent on detonating explosives near chemical-laden rail cars, the overwhelming national effort must be directed toward destroying or detaining those forces intent on harming the country. This is not the time for Miranda and presentment but for concerted, decisive action bounded by the law of war. Every instrument of national power must be brought to bear, both military and civilian. If it makes the most sense for the FBI to detain someone, they should do so. If the military has the most information and can most quickly and effectively detain and interrogate, then consistent with military regulations, they should do so. The process of understanding the depth and breadth of the danger, connecting the web of those involved, determining the possibility of future attacks takes time. It remains essential to afford the Commander-in-Chief adequate time and decision space to maximize the opportunity to defeat the threat and prevent future attacks. That is why the NDAA imposes no temporal limits, why it avoids geographic restrictions and why it grants no special protections to citizens who take up arms with the enemy. As Hamdan and Boumerdiene make clear, there are limits to the Court's deference. The more time that passes, the greater the consequences of an erroneous deprivation of liberty and the greater the risk of not affording someone a reasonable opportunity to challenge the basis for their detention. If there is consensus on the matter of process in preventive detention, it appears to mean reasonable deference followed by increased scrutiny with the passage of time. It means judicial review bounded by pragmatism, and it means balancing very real security concerns against the need to protect individuals from arbitrary deprivation of liberty.

### 2NC No Backsliding

#### Finish card

counter-movement is gaining momentum is untenable in view of these numbers, **which are used by Diamond**, Puddington, and their colleagues (Table 3).

#### Multiple indicators prove liberal democracy is resilient.

Wolfgang Merkel, March 2010. Department of Democracy Research, Social Science Research Center, Berlin; and Department of Political Science, Humboldt University, Berlin, Germany. “Are dictatorships returning? Revisiting the ‘democratic rollback’ hypothesis,” Contemporary Politics 16.1, http://www.wzb.eu/sites/default/files/personen/merkel.wolfgang.289/contemporary-politics2010-merkel.pdf.

To ensure the accuracy of my own look into the future, I wish to look through the lens of modernization theory, structuralism and culturalist theory and to obtain substantive conclusions by means of indicators or indices. Action theories, important as they are for the ex post analysis of case studies or for small-n comparative studies, will be ignored here. For even in their reductionist variants, e.g. those involving rational choice, they have certainly shown an analytical capacity to explain certain decisions during critical junctures of regime change (e.g. Przeworski 1991), but they prove to be largely inappropriate for a prospective view of the stability resources of countries in large N-analyses. How stable are liberal democracies? The core community of liberal democracies is relatively safe from regressing into the camp of hybrid or even autocratic regimes. This core can be considered to consist mainly of the OECD member states, with the exceptions of Mexico and Turkey. In this group of countries, political regime changes are unlikely in the short term. South Korea faces the strongest potential danger of this sort but even here many indicators speak against the possibility of an open autocratization (cf. Bertelsmann 2008, 2010). The situation is similar in Latin America’s relatively consolidated democracies (Costa Rica, Uruguay, Chile, and increasingly Brazil as well). Instable countries, such as Venezuela, Bolivia, Paraguay, Ecuador or the Central American States, are, according to our categorization, not listed as liberal, but as electoral democracies. The core of liberal consolidated democracies—grosso modo those 62 countries that are rated (1)–(1.5) by Freedom House (2009)—face no immediate danger of autocratization. Their high level of consolidation will likely render their polities immune against the external challenges posed by the ﬁnancial crisis that emerged on the horizon in late 2008, even for longer periods of time. The group of incompletely consolidated or slightly defective democracies that Freedom House rates (2)–(2.5) with respect to civil liberties and political rights certainly faces more substantial threats. 5 Freedom House groups 30 countries in this category, but they have to be contrasted against another 26 countries that are rated (3) or (3.5). The reason is that just like the ‘threatened’ liberal states, ‘free’ states may slide into the zone of partially free regimes, while countries of the ‘partially free’ group may also evolve in the opposite direction and join the group of ‘free’ countries. This very general assessment of the potential for political instability has to be underpinned, both theoretically and empirically. Against the backdrop of theories of political transformation, selected indicators are at hand that enable us to picture the level of modernization (modernization theory), the degree of statehood (structuralism), and the degree of ethnic heterogeneity (culturalism) of individual countries and thereby allow for tentative conclusions on the size of the ‘autocratization threat’ (Table 4). A ﬁrst glance at the ‘threat indicators’ listed in the above table demonstrates a strong robustness of the 62 countries rated ‘free’: roughly 75% of them enjoy a GDP per capita of US$6000 or above, i.e. the threshold that is believed, by scholars such as Przeworski, 6 **to protect democracies once they have been established, ‘come hell or high water’** (Przeworski et al. 2000). This impression is supported by the slightly more complex HDI in which only ca. 16% of the 62 cases ﬁgure below the relatively high value of 0.7. The level of modernization of ‘free’ countries indicates a rather robust democratic stability, if one follows modernization theory. Less than a third of this group (30.7%) ranges above the average value of 0.5 for ethnic heterogeneity, which in turn is regarded as a destabilizer both by theorists such as John Stuart Mill or Robert Dahl, and in modern empirical research on democracy. The World Bank’s 2008 value for political stability is extremely high: only 16.9% of the countries ﬁgure below the average of zero. The index for government effectiveness that has also been established by the World Bank’s team led by Daniel Kaufman produces equally high results for democracies. All the thresholds mentioned here are set extremely high. With these as a yardstick, between 15 and 33% of the countries are in areas that are not associated with high levels of stability. Yet, the inverse conclusion - namely that these countries faced an acute danger of destabilization—is not automatically true. It is just that from the perspective of modernization theory, of structuralism, and from a culturalist perspective, their ‘consolidation reservoir’ must be assumed to be lesser than in the other ‘free’ countries. On the whole, the indicators discussed above support the hypothesis that most democracies within the category of ‘free’ states are relatively stable. **A trend towards autocratic regimes can barely be expected**. How stable are hybrid regimes? Hybrid regimes are deﬁned along Freedom House’s category ‘partly not free’. There can be a discussion whether some of the countries scoring between 5 and 5.5 are not already fully autocratic. For the sake of clarity I subsume all countries labelled ‘partly free’ by Freedom House as ‘hybrid regimes’. They are neither exclusively diminished subtypes of democracy nor autocracy, but comprising both in a single category. They vary considerably among each other; they range from ‘defective democracies’ (diminished subtype of democracy) through ‘competitive authoritarian regimes’ (Levitsky and Way 2002) or simply electorally camouﬂaged autocracies (diminished subtypes of autocracy). While the former are closer to ‘liberal’ democracies (or a Freedom House value of 2.5 and less), the latter are neighbouring fully autocratic regimes, i.e. regimes with a Freedom House value of 5.5 or higher. But this proximity to the respective proto-types of political regimes does not mean that hybrid regimes necessarily tend towards one of these poles on the continuum of political regimes. Under certain conditions and in certain environments, hybrid regimes, too, can reach an equilibrium. However, hybrid regimes that closely border one of the two pure or basic regime types (democracy, autocracy) are more likely candidates for a shift into one of the two camps than those that are placed in the middle of the spectrum of hybrid regimes. More than full blown autocratic regimes, hybrids combine conﬂicting norms and institutions that form an incoherent political order. Such normative contradictions consist of, for example, inclusion and exclusion, pluralism and monism, or freedom and repression. The most apparent contradictory institutionalizations are: where there are free elections but with little vertical accountability; where parliaments and the executive compete for norm-setting; where the executive inﬂuences the judiciary; and where non-elected actors claim their own policy domains vis-a`-vis the elected government. Hybrid regimes usually give institutionalized normative promises, such as the implementation of the rule of law and democracy that are, in practice, continuously disavowed: elections are de facto limited in their competitiveness because of manifold manipulations by incumbent rulers; the government controls a large share of the (public) media, abuses state coffers for partisan purposes, favours or hinders certain groups of the electorate; parliaments may be freely elected, but the government interferes through the instruments of ‘decrees’ and ‘emergency rule’ into the legislative process; courts may de jure be independent, but are de facto controlled, and colonized by the executive in the setting and examination of norms; governments are elected, but non-legitimized actors such as the military, religious leaders or social oligarchies such as economic interest groups claim control over certain policy areas (domains) for themselves (e.g. in the ﬁelds of security, gender, economic and taxation policies). Undoubtedly, similar ambitions and tendencies can be found among actors in democracies that are based on the rule of law as well. Yet, they differ from hybrid regimes in that the former have established not only formal, but effective controls against such claims. On the other hand, defective democracies and electoral-authoritarian regimes differ from fully authoritarian regimes in that hybrid regimes are more subject to uncontrollable contingencies that are related, in various degrees of intensity, to the outcomes of elections or political decisions. While the functioning contingency of electoral results and policy decisions generates ‘diffuse support’ (Easton 1965) through a priori determined and ascertained processes in democracies, this is not possible to the same extent in hybrid regimes because citizens experience a difference between the formal standards of norms on the one hand and a contradictory reality of politics on the other, which results in a delegitimization of the entire polity. Hybrid regimes are in fact less stable than both democracies and dictatorships. The difference is considerable in comparison with democracies, and it is still visible vis-a`-vis autocracies. A comparison of the percentage of ‘free’, ‘partly free’, and ‘not free’ regimes that have changed from one type to another between 1995 and 2006 results in the following graph (Figure 1). Only 1.58% of the ‘free’ countries have left their group to join the camp of ‘partly free’ and ‘not free’ countries. 5.23% of autocratic regimes have transgressed the threshold of 5.5 (Freedom House value) in the direction of more democracy. By contrast, 7.49% of hybrid regimes have changed their respective ‘zone of regime’. However, clear trends are not discernable. During the decade following the third wave, roughly the same amount of hybrid regimes have moved into the zone of ‘free’ countries as have moved toward the category of countries rated ‘not free’. **The claim of a ‘democratic rollback’** (Diamond 2008) **or of ‘freedom in retreat’** (Puddington 2008) **is not supported by these ﬁgures**. Quite the contrary: These ﬁgures demonstrate that even partly free regimes as the least durable and most fragile of the three types of regimes have in fact enjoyed relative stability after the third wave of democratization had come to a halt in the mid-1990s. Authoritarian regimes If the hypothesis of the ‘return of autocratic rule’ was correct, we would not only expect a signiﬁcant number of democracies and hybrid regimes to tend to move towards the authoritarian pole of the continuum of regimes, but we would also expect autocracies to sustain a sufﬁcient level of stability. In 2008, Freedom House classiﬁed 43 countries as ‘not free’. These countries can be termed autocracies. Apart from a common authoritarian mode of governance, however, they take on very different forms that display quite different logics. Geddes (1999) develops a threefold typology that she then uses to accord different degrees of stability and respective life expectancies to autocracies. Military regimes have the shortest life expectancy (nine years), followed by ‘personalistic regimes’ (15 years) and, ﬁnally, one-party regimes (23 years). More interesting than the seeming statistic precision of certain numbers of years, 7 however, is the respective logic of political rule and its consequences for the ability of these dictatorships to survive. In general, it is plausible that military regimes are the least hermetic. Often, it is not only the internal factionalization of the military and the rivalries between putschists and non-putschists; hardliners and softliners; army, marine and air force that contributes to the short life expectancy of military regimes. As Geddes stresses, it is mainly a lack of institutionalization, the lack of a legitimizing ideology and legitimacy-eating high degrees of repression that make military regimes especially vulnerable. 8 Personalistic regimes, according to Geddes, have a medium life expectancy. They often break down with the death of the ruler and are particularly vulnerable as soon as succession looms. One-party regimes are correctly assessed as the most stable autocracies (Geddes 1999, Gandhi and Przeworski 2006). First, they draw some stability from their relatively strong institutionalization, the systemic control over resources and over the means of repression, but also from an ideology that, through whatever plausibility, can generate diffuse support. This holds true even for Stalinist North Korea and capitalist-communist China where (per-) versions of a Marxist–Leninist–Maoist ideology are kept alive in order to not let this ideological source of legitimacy run entirely dry. But while cautiously liberalizing China today depends to a large measure on the performance of its economy (speciﬁc support), North Korea, as the world’s only truly totalitarian regime in 2010, survives largely through isolation, repression, and some economic help from China. A recent discussion particularly emphasizes the stabilizing role of institutions in autocratic regimes (i.e. Levitsky and Way 2002, Way 2005, Gandhi and Przeworski 2006, Schedler 2006, Gandhi 2008, Svolik 2008). The possibility of controlling the distribution of power within the ruling bloc and thereby reducing the moral-hazard problem among autocratic elites is found to diminish the danger of coups from within the regime. Moreover, it opened possibilities for an arranged cooptation of semi-loyal opposition into the ruling autocratic block (Gandhi and Przeworski 2006) and proved helpful in handling the higher legitimatory pressure the international donor community, with its demands for good governance, established over the past two decades. Yet, institutions such as parliaments, parties, and seemingly pluralist elections are also potential destabilizing forces in autocratic regimes. They not only stabilize them, but can also provide resources and fora for forces critical of the regimes in their oppositional activities. Formally democratic institutions in autocratic regimes are ambivalent and therefore produce contingent effects. Under certain circumstances, they may serve to stabilize the regime just as, under different conditions, they may also serve to destabilize it. Yet, even destabilization will only lead to promising efforts at democratization in very few cases. Structural factors, such as the ambitions of an often undemocratic opposition, lend support to this rather sceptical outlook. Geddes’ threefold typology of the stability of autocratic regimes is only partially convincing. She misses at least two variants of autocratic systems that, at the beginning of the twenty-ﬁrst century, numerically and politically play a more important role than the almost extinct model of communist one-party regimes, namely (Islamic) rentier states and failing states. Both types follow a logic of political rule that cannot be grasped by the simple threefold logic Geddes proposes. The latter are probably among the least stable non-democratic regimes. This holds true for the Arab petro-dictatorships that are often challenged by fundamentalist Islamist opposition movements, and yet even more for the collapsing African and Asian states. For the latter, instability is a downright deﬁning trait of the anarchic fragmentation of their political rule. Instability, of course, does not mean that these countries are likely candidates for democratic regime changes. More likely is the change from one form of anarcho-autocratic rule to another. The (Arabic-Islamic) rentier states are interesting cases (Albrecht 2006, Schlumberger 2008). On the one side they turned out to be quite stable in the past. The petrorevenues helped to ﬁnance the cooptation of additional groups and sectors of the society into the ruling coalition and ‘paciﬁed’ the masses by material ‘spoils’, preventing their transformation from subjects to citizens, from passive consumers to active protesters. However, challenged by the re-fundamentalization of Islam in the wake of the 1979 Iranian revolution, those states had increasingly to complement their stabilizing cooptation strategy by a theological form of legitimation, namely Islam. Nevertheless, the amalgamation of regime opposition and radical Islamist movements may challenge the autocratic, corrupt, and in the eyes of the radical opposition ‘insufﬁcient Islamic rule’ of the rentier rulers. This will possibly destabilize the base of rentier regimes, but will probably not lead to democracy, but to a different form of autocratic rule, namely some sort of Islamic autocratic rule. So we should not expect that many of the post-rentier regimes will be democratic. Whatever typology of autocratic rule may be constructed, indicators of modernization and conditions related to culture, society and the state suggest that a relatively stable autocratic camp has emerged. There may be oscillations between different forms of autocratic rule, but there are no theoretical or empirical hints that signal notable changes towards sustainable democratization. The third wave of democratization coasted to a standstill during the mid-1990s, and so did the overwhelming optimism that had hypothesized a world-wide victory of democracy. As has been shown, this optimism had been partly produced ‘artiﬁcially’ by both political factors and the prevalence of the action-theoretical paradigm in transition studies. The group of liberal democracies is relatively stable. External shocks such as economic and ﬁnancial crises are unlikely to threaten the democratic character of liberal democracy, as could been seen in the wake of the crisis of banks and the ﬁnancial markets after 2008. Defective democracies, however, may come under greater stress. They might drift further towards the authoritarian camp of regimes if the ﬁnancial crisis has negative long-term impacts on the real economy and eats up the fragile speciﬁc legitimacy nourished by the social and economic performance of governments. This might be true for some of the defective democracies in Latin America, where, after more than 20 years of democratic rule, the extreme economic inequality has barely changed. 9 Combined with the failure of the state to guarantee the physical integrity of its citizens and to solve the Hobbesian problem of internal security, the weak performance could lead to a further hollowing out of the political regimes. Left-wing populist regime alternatives could spread from Venezuela, Ecuador, Bolivia and Nicaragua, right-wing populism in Colombia or the class rule of the rich in some Central American countries could challenge the consolidation or even survival of democracy. However, an analysis of the period between 1995 and 2006 demonstrates that roughly similar numbers of cases from the relatively unstable camp of partly free regimes have moved towards democracy as have tended towards greater autocracy. At least this was true in economically normal times. The number of autocratic regimes is thus unlikely to decrease signiﬁcantly over the coming years; **the ‘rollback-hypothesis’ put forth by Diamond and Freedom House, however, can neither be supported by ﬁgures nor by arguments**. A ‘reverse wave’ is currently not to be expected, even though a fourth-wave-of-democratization scenario seems even more unlikely. In most countries, the type of political regime will hardly change over the medium term. Many factors support the proportions of the status quo as regards the relations between different regime types. The global systemic competition is, for the time being, frozen—though not ended.

### 2NC No Backsliding—AT: Diamond

#### He changed his mind in 2011. And his argument was that the economic crisis would cause backsliding, not U.S. war powers policy.

Larry Diamond, January 2011. Senior fellow at the Hoover Institution and the Freeman Spogli Institute for International Studies at Stanford Uni- versity and director of Stanford’s Center on Democracy, Devel- opment, and the Rule of Law. “Why Democracies Survive,” Journal of Democracy 22.1.

It is a cardinal principle of empirical democratic theory that hard eco- nomic times are supposed to mean hard times for democracy, particu- larly when it is new and fragile. As Seymour Martin Lipset argued in his 1960 classic, Political Man, when democratic regimes lack intrinsic legitimacy (what is often now called democratic “consolidation”), their survival depends precariously on effective performance—a concept that is measured primarily in economic terms. If no crisis supervenes, democracies with weak legitimacy may muddle along for some time, but when they lose their effectiveness, they collapse—as did shaky democratic governments in Austria, Germany, and Spain in the 1930s, following the onset of the Great Depression.1 In fact, the economic disarray of the late 1920s and 1930s swallowed up a number of other democracies in Europe and Latin America, even though the origin of the “first reverse wave” of global democratization can be traced further back to the March on Rome by Benito Mussolini’s Fascists in October 1922.2

During the second half of the twentieth century, there was a strong re- lationship between economic performance and the survival of regimes, particularly democracies. Analyzing data covering the years from 1950 to 1990, Adam Przeworski and his colleagues found that when democra- cies face a decline in income, they are three times more likely to disap- pear than when they experience economic growth. When they looked at longer-term trajectories, the impact of economic performance became even more striking: “The chance that a democracy will die is 1 in 135 when incomes grow during any three or more consecutive years, and 1 in 13 when incomes fall during any two consecutive years.”3 More than two-thirds of the democratic failures that Przeworski and his colleagues documented in their forty-year period of analysis were accompanied by a fall in income in one or both of the preceding years. Thus, “deaths of democracies follow a clear pattern: They are more likely when a country experiences an economic crisis, and in most cases they are accompanied by one.”4

Yet the current period in world history defies these patterns. By all accounts, the global financial crisis that began in September 2008 has triggered the worst economic downturn since the Great Depression. **Yet it appears to have had little effect on the survival of democracy so far**, for three reasons. First, the countries hardest hit economically by the financial crisis have mostly been the wealthy, industrialized democra- cies or the new European market economies. As Przeworski and his colleagues also showed, democracy has never broken down in a wealthy country, and after many decades of successful functioning, these democ- racies are now consolidated and deeply institutionalized. The postcom- munist democracies of Central and Eastern Europe that have recently been admitted into the European Union (and that would face enormous economic costs for abandoning democracy) also now appear to be consolidated. Second, in the newer and weaker democracies (including both the upper-middle-income ones in Eastern Europe and the less developed ones), the effect of economic turbulence has been the defeat of democratically elected governments but not the demise of democracy. And third, the breakdowns of democracy that have been occurring largely predate the onset of the global recession and are due to bad internal governance, not unfavorable global conditions. In fact, in a surprising number of instances, democratic breakdowns occurred while aggregate rates of economic growth were fairly robust.

#### There has been a backlash against incumbent parties, but not democracy itself.

Larry Diamond, January 2011. Senior fellow at the Hoover Institution and the Freeman Spogli Institute for International Studies at Stanford Uni- versity and director of Stanford’s Center on Democracy, Devel- opment, and the Rule of Law. “Why Democracies Survive,” Journal of Democracy 22.1.

What do we learn from this review of electoral politics in a time of global economic turmoil? If there is a common thread running through all these cases, **it is the resilience of democratic politics**. Voters pun- ished incumbent leaders and parties who performed poorly, either be- cause they were dragged down into the global economic undertow or because they had otherwise done a poor job of meeting voters’ expecta- tions for good governance, or perhaps for both reasons. In most cases where economic downturns were severe, with the growth rate in the election year plummeting by at least 7 percentage points (as happened in Bulgaria, Mexico, Mongolia, Panama, and Ukraine), incumbents took a beating. The only ruling party that defied this trend was the rather un- reconstructed Communist Party of Moldova, which probably rigged the vote—and even then it was punished badly just three months later. One could also cite the narrow reelection of Romania’s incumbent president in late 2009, but that came in a semipresidential system where govern- ing power had shifted to a different ruling coalition after parliamentary elections the previous year.

The summary data can be viewed in Table 2 on page 28. I sort elec- tions going back to the fourth quarter of 2008 into two outcomes: wheth- er the incumbent party retained power (or gained legislative ground) or lost power (or suffered a midterm defeat). In addition, I distinguish three groups: modest impact, with economic growth declining (or estimated to have declined) in the election year by fewer than 3 percentage points from the previous year; moderate impact (a decline of 3 to 7 points); and severe impact, with growth declining from the previous year by more than 7 points.20 In seven of the ten “severe-impact” cases, the in- cumbents lost (this becomes seven of nine if we eliminate Moldova’s questionable April 2009 balloting). Where economic growth declined sharply but not as drastically, incumbents lost five of eight times. Where economic performance was good or at least not as bad, incumbents won a majority of the time, and where they lost they were being punished for other performance failures. In general, democratic elections have performed as intended in times of economic distress, **providing a safety valve that allows voters to punish incumbents while preserving the system as a whole**.

### 2NC No Impact—DPT

#### Democratic peace is spurious—causal logic does not support the correlation.

Sebastian Rosato, November 2003. Ph.D. Candidate, Department of Political Science. “The Flawed Logic of Democratic Peace Theory,” American Political Science Review 97.4.

Democratic peace theory—the claim that democ- racies rarely fight one another because they share common norms of live-and-let-live and domestic institutions that constrain the recourse to war—is probably the most powerful liberal contribu- tion to the debate on the causes of war and peace.1 If the theory is correct, it has important implications for both the study and the practice of international poli- tics. Within the academy it undermines both the realist claim that states are condemned to exist in a constant state of security competition and its assertion that the structure of the international system, rather than state type, should be central to our understanding of state behavior. In practical terms democratic peace theory provides the intellectual justification for the belief that spreading democracy abroad will perform the dual task of enhancing American national security and promot- ing world peace.

In this article I offer an assessment of democratic peace theory. Specifically, I examine the causal logics that underpin the theory to determine whether they offer compelling explanations for why democracies do not fight one another.

A theory is comprised of a hypothesis stipulating an association between an independent and a dependent variable and a causal logic that explains the connec- tion between those two variables. To test a theory fully, we should determine whether there is support for the hypothesis, that is, whether there is a correlation be- tween the independent and the dependent variables and whether there is a causal relationship between them.2 An evaluation of democratic peace theory, then, rests on answering two questions. First, do the data sup- port the claim that democracies rarely fight each other? Second, is there a compelling explanation for why this should be the case?

Democratic peace theorists have discovered a pow- erful empirical generalization: Democracies rarely go to war or engage in militarized disputes with one an- other. Although there have been several attempts to challenge these findings (e.g., Farber and Gowa 1997; Layne 1994; Spiro 1994), the correlations remain ro- bust (e.g., Maoz 1998; Oneal and Russett 1999; Ray 1995; Russett 1993; Weart 1998). Nevertheless, some scholars argue that while there is certainly peace among democracies, **it may be caused by factors other than the democratic nature of those states** (Farber and Gowa 1997; Gartzke 1998; Layne 1994). Farber and Gowa (1997), for example, suggest that the Cold War largely explains the democratic peace finding. In essence, they are raising doubts about whether there is a convinc- ing causal logic that explains how democracies inter- act with each other in ways that lead to peace. To resolve this debate, we must take the next step in the testing process: determining the persuasiveness of the various causal logics offered by democratic peace theorists.

### 1NC AT: Russia

#### 1ac obviously doesn’t stop human rights abuses in Russia—Putin won’t change because we give detainees a trial

#### Relations are structurally impossible – growing Russian isolationism, nationalism, and Putin policies make any overture temporary

**Economist 2-16** [“The dread of the other,” http://www.economist.com/news/europe/21571904-leading-role-played-anti-americanism-todays-russia-dread-other]

IF AMERICA did not exist, Russia would have to invent it. In a sense it already has: first as a dream, then as a nightmare. No other country looms so large in the Russian psyche. To Kremlin ideologists, the very concept of Russia’s sovereignty depends on being free of America’s influence.¶ Anti-Americanism has long been a staple of Vladimir Putin, but it has undergone an important shift. Gone are the days when the Kremlin craved recognition and lashed out at the West for not recognising Russia as one of its own. Now it neither pretends nor aspires to be like the West. Instead, it wants to exorcise all traces of American influence.¶ Four years after the American “reset”, the relationship is being “reformatted” to rid dependence on America, says Alexei Pushkov, the pugnacious chairman of the Russian parliament’s foreign-relations committee. **The Russians have shut off all co-operation that uses American money**, including on health care, civil society, fighting human trafficking and drugs, and dismantling unconventional weapons.¶ All this, according to Mr Pushkov, ends an era when Russia looked to the West as a model. Some Russian deputies have even suggested fining cinemas that show too many foreign films, or banning foreign words. A new law makes it treasonable to provide consultancy or “other assistance” to a foreign state directed against Russia’s national security. “The government’s policies are driving Russia into isolation,” says a Western diplomat. Anti-Americanism used to be a postmodernist game played by an elite that had made itself comfortable in the West. Now the game seems to have become real.¶ For instance, the Kremlin has banned American couples from adopting Russian orphans, depriving many children with severe disabilities of the chance of a decent life. This was Russia’s first response to America’s Magnitsky act, named after Sergei Magnitsky, a lawyer driven to an early death in a Russian prison by the people whom he accused of fraud. The act threatens sanctions against Russian officials directly involved in human-rights abuses. Russia’s second response was a law introduced by Mr Putin prohibiting Russian officials or their immediate family members from holding foreign bank accounts or foreign assets, because such things pose a threat to national security.¶ These moves are less a response to American actions than to Russia’s domestic situation. Dmitry Trenin, head of the Moscow Carnegie Centre, says that, almost for the first time, bilateral relations have been hijacked by Russian politics. The trigger for the new anti-Americanism was the street protests against the Duma election in December 2011, which the Kremlin blamed on America. Falling popular trust in the Kremlin, worries about capital flight and the economy, and an antagonistic urban middle class have led Mr Putin to resort to nationalism, traditionalism and selective repression. Unable to stoke ethnic nationalism for fear of igniting the north Caucasus again, he has instead taken aim at the West and Western values.¶ His traditionalist rhetoric conveniently eliminates the need for new ideas or modernisation—a word that has vanished from the official vocabulary (along with Dmitry Medvedev, now the low-profile prime minister). It appeals to Russian history, particularly the second world war, and to the Orthodox Church.¶ Recently the Kremlin used the 70th anniversary of the victory at Stalingrad to justify Russia’s isolationism. As Mr Pushkov tweeted, “Stalingrad was not only a breaking point in the war, but also in the centuries-long battle between the West and Russia. Hitler was the last conqueror who came from the West.” A few years ago, such comments came only from right-wing nationalists. Now they belong to the mainstream. Russia used to argue that its competition with America was driven by interests. Now it says its confrontation with America is about values.¶ Monkey business¶ Maksim Shevchenko, a TV journalist and a Kremlin-approved crusader against liberalism, wrote recently that “Russia and the West are at war…There is a growing feeling that most Western people belong to a different humanoid group from us; that we are only superficially similar, but fundamentally different.”¶ Kirill Rogov, a political analyst, says the Kremlin has imposed its traditionalist agenda on Russian society by prosecuting Pussy Riot, the punk singers who performed obscenely on the altar of Russia’s main cathedral, by banning the promotion of homosexuality and by blocking the American adoptions. This has allowed the Kremlin to present protesters against Mr Putin not only as foreign agents, but as a bunch of homosexual, blasphemous mercenaries ready to sell their children to the evil empire.¶ Yet it has not boosted Mr Putin’s popularity or restored trust in his presidency. Indeed, the numbers seeing America as a friend, not a foe, have risen in the past year, according to a Levada opinion poll. One explanation for this might be growing mistrust of the Kremlin. That is what made Soviet propaganda ineffective 20 years ago. Russian society also seems to have limited enthusiasm for the growing political role of the church.¶ Russia’s obsession with America is countered with a broad indifference on the American side. **The “reset” policy**, which has helped bring about some American wishes, including a transport corridor to Afghanistan and co-operation on Iran, **has now been exhausted. “There are no big deals to be had with Putin,”** Fiona Hill and Clifford Gaddy of the Brookings Institution in Washington, DC, argued recently in the New York Times. Mr Pushkov retorts that America has not understood how important Russia is for its security.¶ The irony is that the Kremlin’s anti-Americanism reveals not its independence but its reliance on America as an enemy. The real casualty may be Russia itself.

#### No risk of U.S.-Russian war – Russia knows the U.S. is infinitely more powerful and that it couldn’t be a threat.

**Bandow 08** (Doug, former senior fellow at the Cato Institute and former columnist with Copley News Service, 3/“Turning China into the Next Big Enemy.” http://www.antiwar.com/bandow/?articleid=12472)

In fact, America remains a military colossus. The Bush administration has proposed spending $515 billion next year on the military; more, adjusted for inflation, than at any time since World War II. The U.S. accounts for roughly half of the world's military outlays. Washington is allied with every major industrialized state except China and Russia. America's avowed enemies are a pitiful few: Burma, Cuba, Syria, Venezuela, Iran, North Korea. The U.S. government could destroy every one of these states with a flick of the president's wrist. Russia has become rather contentious of late, but that hardly makes it an enemy. Moreover, the idea that Moscow could rearm, reconquer the nations that once were part of the Soviet Union or communist satellites, overrun Western Europe, and then attack the U.S. – without anyone in America noticing the threat along the way – is, well, a paranoid fantasy more extreme than the usual science fiction plot. The Leninist Humpty-Dumpty has fallen off the wall and even a bunch of former KGB agents aren't going to be able to put him back together.

AT: NATO Collapse

NATO alliance is resilient and will not collapse

Techau 10 - a Research Advisor at the NATO Defense College in Rome. (Jan, 17 November, “NATO and the Resilience of the Great Transatlantic Bargain” http://www.ispionline.it/it/documents/Commentary\_Techau\_17.11.2010.pdf)

Whether rushing through such a densely packed agenda will be able to quell the ever-present de-bate about NATO’s “unavoidable” and “unstoppable” demise remains to be seen. In the past, skep-tics were busy pointing at a number of inner-alliance difficulties, some of them structural, to predict the impending break-up of NATO. Among these difficulties were, typically, a lack of defense in-vestments, a widening capabilities gap between the US and European allies, and diverging threat perceptions amongst NATO member states. While these problems have indeed been of substantial concern for NATO leaders and analysts, they have not proven deadly for NATO. For twenty years (and even longer), NATO has been able to manage these issues while remaining relevant for its old members and attractive for potential new ones. These problems could not undermine NATO because they were, ultimately, not substantial enough to destroy the grand strategic trade-off///

 that is the fundament of the alliance. A closer look at this trade-off reveals the reasons for its sturdi-ness.

## \*\*\* 1NR

### No BW

#### No impact to bioweapons—multiple reasons

Mueller 10 [John, Woody Hayes Chair of National Security Studies at the Mershon Center for International Security Studies and a Professor of Political Science at The Ohio State University, A.B. from the University of Chicago, M.A. and Ph.D. @ UCLA, Atomic Obsession – Nuclear Alarmism from Hiroshima to Al-Qaeda, Oxford University Press]

Properly developed and deployed, biological weapons could potentially, if thus far only in theory, kill hundreds of thousands, perhaps even millions, of people. The discussion remains theoretical because biological weapons have scarcely ever been used. For the most destructive results, they need to be dispersed in very low-altitude aerosol clouds. Since aerosols do not appreciably settle, pathogens like anthrax (which is not easy to spread or catch and is not contagious) would probably have to be sprayed near nose level. Moreover, 90 percent of the microorganisms are likely to die during the process of aerosolization, while their effectiveness could be reduced still further by sunlight, smog, humidity, and temperature changes. Explosive methods of dispersion may destroy the organisms, and, except for anthrax spores, long-term storage of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organisms have a limited lifetime. Such weapons can take days or weeks to have full effect, during which time they can be countered with medical and civil defense measures. In the summary judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties-as an aerosol that could be inhaled-requires a delivery system of enormous sophistication, and even then effective dispersal could easily be disrupted by unfavorable environmental and meteorological conditions.

### AT: Afghanistan

#### Impact inevitable – residual force

**Biddle, September 13** - Professor of Political Science and International Affairs at George Washington University and Adjunct Senior Fellow for Defense Policy at the Council on Foreign Relations (Stephen, “Ending the War in Afghanistan: How to Avoid Failure on the Installment Plan” Foreign Affairs, Sept/Oct, proquest)

In the near term, Congress will probably pay the ansf what the White House requests, but the more time goes on, the more likely it will be that these appropriations will be cut back. It will not take much reduction in funds before the ansf contracts to a size that is smaller than what it needs to be to hold the line or before a shrinking pool of patronage money splits the institution along factional lines. Either result risks a return to the civil warfare of the 1990s, which would provide exactly the kind of militant safe haven that the United States has fought since 2001 to prevent.

Managing the congressional politics around sustaining Afghan forces after the transition was feasible back when Washington assumed that a troop surge before the transition would put the Taliban on a glide path to extinction. The United States would still have had to give billions of dollars a year to the ansf, but the war would have ended relatively quickly. After that, it would have been possible to demobilize large parts of the ansf and turn the remainder into a peacetime establishment; aid would then have shrunk to lower levels, making congressional funding a much easier sell. But that is not the scenario that will present itself in 2014. With an indefinite stalemate on the horizon instead, the politics of funding the ansf will be much harder to handle-and without a settlement, that funding will outlast the Taliban's will to fight only if one assumes heroic patience on the part of Congress.

### 1NR Overview

#### It’s a war powers fight that Obama wins – but failure greenlights Israel strikes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### A2 U Overwhelms

#### Doesn’t o/w – support’s there but Obama’s holding them from the brink

Kapur 2/4 [Sahil, Senior Congressional Reporter and Supreme Court Correspondent for TPM, 2014, “Dodging a Bullet: Dems Decide Not to Sabotage Obama's Iran Deal,” http://talkingpointsmemo.com/dc/senate-democrats-iran-sanctions-nuclear-deal]

Senate Democrats came close to blowing up President Barack Obama's nuclear deal with Iran by toying with a new sanctions bill that negotiators cautioned would poison talks.

But in recent days it has become clear that they're going to hold off, after aggressive lobbying from the White House, as diplomatic negotiators' attempt to turn an interim six-month deal struck last November into something more permanent. The goal is to get Iran to surrender its nuclear weapons capabilities in exchange for relief from a swath of economically devastating sanctions.

"We've maintained for some time that as long as negotiations were taking place and Iran was fulfilling its end of the bargain, the sanctions bill would not come to the floor," said a senior Democratic Senate aide, who wasn't authorized to speak about the issue on the record.

The aide praised Obama and Secretary of State John Kerry for the "remarkable diplomatic feat" of convincing Iran to halt critical components of its nuclear program. "It would be foolish to put that in jeopardy by rushing this bill to the floor," said the aide.

Legislation to beef up sanctions on Iran, authored by Senate Foreign Relations Chair Bob Menendez (D-NJ), has a whopping 58 additional sponsors, 15 of which are Democrats. Criticism of the interim deal from Israeli President Benjamin Netanyahu and AIPAC, the pro-Israel lobbying group, boosted the bill. But in the last three weeks, numerous Democrats have backed away and Senate Majority Leader Harry Reid (D-NV) has said he'll wait to see how negotiations play out before considering the sanctions bill.

Obama, Kerry and their top aides pulled Democrats back from the brink by making their opposition to any sort of new sanctions bill clear in a series of public remarks and private face-to-face meetings with top senators. They've warned that bringing up a sanctions bill amid talks would empower the hard-liners in Iran, making it politically untenable for President Hassan Rouhani to cut a long-term deal. They've conveyed their strong belief that pushing sanctions legislation at this pivotal moment would only increase the chances of a war, according to sources familiar with the matter.

A turning point came on Jan. 12, when Obama announced that the interim deal with Iran was moving forward as planned and fired a shot across the bow to his critics: "Imposing additional sanctions now will only risk derailing our efforts to resolve this issue peacefully, and I will veto any legislation enacting new sanctions during the negotiation." That's when the momentum began to fade. Sens. Patty Murray (D-WA) and Elizabeth Warren (D-MA), among others, soon declared their opposition to a sanctions bill as the diplomatic process plays out. Co-sponsoring Democratic Sens. Kirsten Gillibrand (NY), Chris Coons (DE), Michael Bennett (CO) and Joe Manchin (WA) also gradually backed off the bill.

"As of Jan. 20, the nuclear deal started moving forward and Iran's nuclear program was rolled back in some key areas," Marie Harf, a spokeswoman for the State Department, told TPM. "So for a lot of folks on the Hill, the feeling was that we're seeing tangible progress and they didn't want to do anything to disrupt or roll back that progress. That's a powerful message, and it became more real for them."

Not everyone is convinced, of course. Menendez and Sen. Mark Kirk (R-IL), among others, still want to advance the bill, which would slap new sanctions on Iran if it violates the interim deal or walks away from the negotiations. Senate Minority Leader Mitch McConnell (R-KY) has called on Reid to allow a vote on the bill, claiming that it would pass with a veto-proof majority.

#### Fight isn’t over - expert

JAHANPOUR 2 – 5 – 14 TFF Associate and Fellow of The Royal Asiatic Society, is a former professor and dean of the Faculty of Foreign Languages at the University of Isfahan and a former Senior Research Fellow at Harvard University [Farhang Jahanpour, IRAN-P5+1 DEAL: Positive steps but hawks try to derail it, http://www.payvand.com/news/14/feb/1044.html]

In his State of the Union Address on 28th February, President Barack Obama bluntly pointed out that if the hawks in Congress pushed for a bill to impose new sanctions on Iran he would veto that bill. This brave and almost unprecedented move by President Obama has silenced, at least for the time being, the opposition to the Joint Plan of Action that was agreed by Iran and the P5+1 (the five permanent Security Council members plus Germany) last November. This was a major setback for AIPAC and other pro-Israeli lobbies that had mobilized all their forces to block the deal.

In fact, some of the Democratic Senators that had sponsored the bill to impose additional sanctions on Iran have already distanced themselves from it. Furthermore, at least seventy Members of Congress are organizing a letter to the President supporting U.S.-Iran diplomacy and opposing new sanctions. (1)

NEW ROUND OF TALKS

Meanwhile, 20th January marked an historic turn in the Iranian nuclear dispute with the West, when both Iran and the West began to implement the terms of the agreement. The IAEA director general Yukiya Amano has said that he could report that “practical measures are being implemented as planned” by Iran, and that there would be new negotiations over the next phase on 8th February. Iran also has agreed to a new round of negotiations on 18th February with the P5+1. (2)

For his part, Iranian Foreign Minister Mohammad Javad Zarif has said: “What I can promise is that we will go to those negotiations with the political will and good faith to reach an agreement, because it would be foolish for us to only bargain for six months - that would be [a] disaster for everybody.”

HAWKS CONTINUE TO OPPOSE THE DEAL

However, despite all these positive steps, it is premature to imagine that the battle is over and that the hawks have stopped trying to undermine the deal. Many rightwing politicians and commentators are already waiting for the failure of the talks and the outbreak of another disastrous war in the Middle East. Arguing in favor of imposing more sanctions, the rightwing columnist Jennifer Rubin wrote: “It is either sanctions or Israel that will prevent a nuclear-armed Iran.” (3)

The hawkish former US ambassador to the UN John Bolton gloomily predicted the failure of the talks and added: “We’ll see soon enough what happens when the ship sinks.” According to Jennifer Rubin: “Unfortunately, that sinking ship is either Iran’s attainment of nuclear arms capability or war in which Israel is forced to defend itself and the West.”

#### Pressure key to maintain

THE HILL 1 – 29 – 14 [After veto threat, senators back off on Iran, <http://thehill.com/blogs/global-affairs/middle-east-north-africa/196845-some-senators-backing-down-from-iran-sanctions>]

Despite pressure from the White House, Menendez and Kirk are still firm in their support of their measure.

"I’m not frustrated,” Menendez told The Huffington Post on Tuesday after Obama's address. "The president has every right to do what he wants."

Kirk pointed out in a statement that Iran recently said the interim deal does not require them to dismantle their nuclear program.

“While the president promises to veto any new Iran sanctions legislation, the Iranians have already vetoed any dismantlement of their nuclear infrastructure,” Kirk said.

Forty-three Republicans and 16 Democrats co-sponsor the bill, but three top Senate Democrats are reportedly opposed to moving it forward.

Sens. Dick Durbin (D-Ill.), the second-highest ranking Democrat, Patty Murray (D-Wash.), the fourth-highest ranking Democrat, and Elizabeth Warren (D-Mass.) have said they are against the bill.

Senate Majority Leader Harry Reid (D-Nev.) has also suggested he’s leaning toward not allowing a vote on it.

On Wednesday, Sen. Marco Rubio (R-Fla.) said the Senate should move the sanctions bill forward to the floor, predicting it would have a veto-proof majority.

Meanwhile, Reuters reported on Monday that lawmakers in both the House and Senate are considering a nonbinding resolution that expresses concern about Iran’s nuclear program.

### A2 Reid Blocks

#### Reid is able to fend off a vote because Obama is pressuring Democrats – if those dynamics change, Reid would be forced to cave

**Kaper, 1/17/14** – Stacy, National Journal, “U.S. Senate's Iran Hawks Flounder Against Reid-Obama Coalition” <http://www.nti.org/gsn/article/us-senates-iran-hawks-flounder-against-reid-obama-coalition/>)

The U.S. Senate's Iran hawks have lots of votes to back their sanctions legislation. What they lack is a plan to get the bill to the floor. Fifty-nine senators -- including 16 Democrats -- have signed onto sanctions legislation from Democratic Senator Robert Menendez (N.J.) and Republican Senator Mark Kirk (Ill.). The measure would punish Iran with sanctions if it reneges on an interim nuclear agreement, or if that agreement does not ultimately abolish any nuclear-weapons capabilities for Iran. The count has climbed rapidly since the bipartisan pair introduced their legislation in late December. But now it's unclear whether that support will be enough to clear the bill's next major hurdle: Senate Majority Leader Harry Reid. The Nevada Democrat is siding with the White House, which has put intense pressure on lawmakers not to act on sanctions, arguing it could result in both a nuclear-armed and hostile Iranian state. And without Reid's backing, supporters of the Menendez-Kirk bill are unsure how to move the measure to the floor. "I assume that if the Democrat senators put enough pressure on **Senator** Reid he might bring it to the floor," said Missouri Republican Senator Roy Blunt. "But, you know, we are at a moment in the Senate where nothing happens that Senator Reid doesn't want to happen; and this is something at this moment that Senator Reid doesn't want to happen." And for now, sanctions supporters are still mulling their strategy. "We are talking amongst ourselves. There is a very active debate and discussion ongoing about how best to move forward," said Democratic Senator Richard Blumenthal of Connecticut, a cosponsor of the bill. "There are a number of alternative strategies, but we're deliberating them." While Reid has, at least for now, foiled their policy plans, sanctions supporters are still scoring the desired political points on the issue. They can report their efforts to their constituents while blaming Reid for the inaction. But whatever pressure Reid is getting from his colleagues, he's also getting support from the commander in chief. In a White House meeting Wednesday night, President Obama made a hard sell to Democrats on the issue, pleading with them to back off sanctions while his team worked on a nuclear pact. "The president did speak passionately about how [we] must seize this opportunity, that we need to seize this six months … and that if Iran isn't willing to in the end make the decisions necessary to make it work, he'll be ready to sign a bill to tighten those sanctions -- but we gotta give this six months," said Senator Jeff Merkley of Oregon, after returning from the White House. In the meantime, many bill supporters reason that Reid will eventually feel the heat. "We'll just have to ratchet up the pressure, that's all," said Republican Senator John McCain (Ariz.). "The president is pushing back, obviously, and he's appealing to the loyalty of Democrats, but there are a lot of other forces out there that are pushing in the other direction, so we'll see how they react." Earlier this week Senator Lindsey Graham (R-S.C.) said he was hoping to find more Democratic cosponsors over the recess and was talking to House Majority Leader Eric Cantor (Va.) about whether the Republican-controlled House might take up the Senate sanctions bill as a way to spur the Senate to act. But neither of Graham's approaches represents a broad, coordinated campaign. Democrats, who have more power to drive the train in the Senate, seem to be in little hurry. "I don't think there is any time schedule related to it at this point," said Democratic cosponsor Ben Cardin of Maryland. "We are all trying to figure out how we can be most helpful and make sure Iran does not become a nuclear-weapon state." Menendez, who chairs the Senate Foreign Relations Committee and is the lead Democratic sponsor, said he is focused on hearing more from the administration about the reported unofficial secret "side deal" with Tehran. About the plans to proceed, Menendez said noncommittally, "We'll see." Kirk, the Republican who is the other lead sponsor, said he was counting on elections pressure to spark action. "My hope is that, as we get towards midterm elections, members are going to want to be on record being against giving up billions of dollars to Iran," Kirk said. Other members are hoping lobbying groups can carry the weight on this one. McCain said he hoped pro-Israel groups could convince Democrats to spring into action or that supporters could make it uncomfortable for Reid to continue blocking the bill.