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#### Obama will win the debt ceiling fight – strength and resolve are key to forcing the GOP to bend

POLITICO 10 – 1 – 13 [“Government shutdown: President Obama holds the line” http://www.politico.com/story/2013/10/government-shutdown-president-obama-holds-the-line-97646.html?hp=f3]

President Barack Obama started September in an agonizing, extended display of how little sway he had in Congress. He ended the month with a display of resolve and strength that could redefine his presidency. All it took was a government shutdown. This was less a White House strategy than simply staying in the corner the House GOP had painted them into — to the White House’s surprise, Obama was forced to do what he so rarely has as president: he said no, and he didn’t stop saying no. For two weeks ahead of Monday night’s deadline, Obama and aides rebuffed the efforts to kill Obamacare with the kind of firm, narrow sales pitch they struggled with in three years of trying to convince people the law should exist in the first place. There was no litany of doomsday scenarios that didn’t quite come true, like in the run-up to the fiscal cliff and the sequester. No leaked plans or musings in front of the cameras about Democratic priorities he might sacrifice to score a deal. After five years of what’s often seen as Obama’s desperation to negotiate — to the fury of his liberal base and the frustration of party leaders who argue that he negotiates against himself. Even his signature health care law came with significant compromises in Congress. Instead, over and over and over again, Obama delivered the simple line: Republicans want to repeal a law that was passed and upheld by the Supreme Court — to give people health insurance — or they’ll do something that everyone outside the GOP caucus meetings, including Wall Street bankers, seems to agree would be a ridiculous risk. “If we lock these Americans out of affordable health care for one more year,” Obama said Monday afternoon as he listed examples of people who would enjoy better treatment under Obamacare, “if we sacrifice the health care of millions of Americans — then they’ll fund the government for a couple more months. Does anybody truly believe that we won’t have this fight again in a couple more months? Even at Christmas?” The president and his advisers weren’t expecting this level of Republican melee, a White House official said. Only during Sen. Ted Cruz’s (R-Texas) 21-hour floor speech last week did the realization roll through the West Wing that they wouldn’t be negotiating because they couldn’t figure out anymore whom to negotiate with. And even then, they didn’t believe the shutdown was really going to happen until Saturday night, when the House voted again to strip Obamacare funding. This wasn’t a credible position, Obama said again Monday afternoon, but rather, bowing to “extraneous and controversial demands” which are “all to save face after making some impossible promises to the extreme right wing of their political party.” Obama and aides have said repeatedly that they’re not thinking about the shutdown in terms of political gain, but the situation’s is taking shape for them. Congress’s approval on dealing with the shutdown was at 10 percent even before the shutters started coming down on Monday according to a new CNN/ORC poll, with 69 percent of people saying the House Republicans are acting like “spoiled children.” “The Republicans are making themselves so radioactive that the president and Democrats can win this debate in the court of public opinion” by waiting them out, said Jim Manley, a Democratic strategist and former aide to Senate Majority Leader Harry Reid who has previously been critical of Obama’s tactics. Democratic pollster Stan Greenberg said the Obama White House learned from the 2011 debt ceiling standoff, when it demoralized fellow Democrats, deflated Obama’s approval ratings and got nothing substantive from the negotiations. “They didn’t gain anything from that approach,” Greenberg said. “I think that there’s a lot they learned from what happened the last time they ran up against the debt ceiling.” While the Republicans have been at war with each other, the White House has proceeded calmly — a breakthrough phone call with Iranian President Hassan Rouhani Friday that showed him getting things done (with the conveniently implied juxtaposition that Tehran is easier to negotiate with than the GOP conference), his regular golf game Saturday and a cordial meeting Monday with his old sparring partner Israeli Prime Minister Benjamin Netanyahu. White House press secretary Jay Carney said Monday that the shutdown wasn’t really affecting much of anything. “It’s busy, but it’s always busy here,” Carney said. “It’s busy for most of you covering this White House, any White House. We’re very much focused on making sure that the implementation of the Affordable Care Act continues.” Obama called all four congressional leaders Monday evening — including Boehner, whose staff spent Friday needling reporters to point out that the president hadn’t called for a week. According to both the White House and Boehner’s office, the call was an exchange of well-worn talking points, and changed nothing. Manley advised Obama to make sure people continue to see Boehner and the House Republicans as the problem and not rush into any more negotiations until public outrage forces them to bend. “He may want to do a little outreach, but not until the House drives the country over the cliff,” Manley said Monday, before the shutdown. “Once the House has driven the country over the cliff and failed to fund the government, then it might be time to make a move.” The White House believes Obama will take less than half the blame for a shutdown – with the rest heaped on congressional Republicans. The divide is clear in a Gallup poll also out Monday: over 70 percent of self-identifying Republicans and Democrats each say their guys are the ones acting responsibly, while just 9 percent for both say the other side is. If Obama is able to turn public opinion against Republicans, the GOP won’t be able to turn the blame back on Obama, Greenberg said. “Things only get worse once things begin to move in a particular direction,” he said. “They don’t suddenly start going the other way as people rethink this.”

#### Losing authority will embolden the GOP to fight on the debt ceiling

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

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

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

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

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

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

#### Destroys the global economy

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

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

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

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

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

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

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

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

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

#### Global nuke wars

Kemp 10—Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace [Geoffrey Kemp, 2010, *The East Moves West: India, China, and Asia’s Growing Presence in the Middle East*, p. 233-4]

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

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

GLAZIER 06 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

#### 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.

#### The courts have NO AUTHORITY to decide to release prisoners – this is necessary to CORE NEGATIVE GROUND about circumvention related to the aff. It’s also not an authority of the president which explodes limits – they can talk about anything related to the 4 topic areas which makes research impossible.

#### Independently, the aff is extra topical which explodes limits and makes being neg impossible because it affects the executive’s immigration authority

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#### Liberal institutionalism is an imperial ideology disguised by the language of science. Liberal institutionalism requires the elimination of non-liberal forms of life to achieve national security

Tony SMITH Poli Sci @ Tufts 12 [*Conceptual Politics of Democracy Promotion* eds. Hobson and Kurki p. 206-210]

Writing in 1952, Reinhold Niebuhr expressed this point in what remains arguably the single best book on the United States in world affairs, The Irony of American History. 'There is a deep layer of Messianic consciousness in the mind of America,' the theologian wrote. Still, 'We were, as a matter of fact, always vague, as the whole liberal culture is fortunately vague, about how power is to be related to the allegedly universal values which we hold in trust for mankind' (Niebuhr 2008: 69). 'Fortunate vagueness', he explained, arose from the fact that 'in the liberal version of the dream of managing history, the problem of power is never fully elaborated' (Niebuhr 2008: 73). Here was a happy fact that distinguished us from the communists, who assumed, thanks to their ideology, that they could master history, and so were assured that the end would justify the means, such that world revolution under their auspices would bring about universal justice, freedom , and that most precious of promises, peace. In contrast, Niebuhr could write: On the whole, we have as a nation learned the lesson of history tolerably well. We have heeded the warning 'let not the wise man glory in his wisdom, let not the mighty man glory in his strength.' Though we are not without vainglorious delusions in regard to our power, we are saved by a certain grace inherent in common sense rather than in abstract theories from attempting to cut through the vast ambiguities of our historic situation and thereby bringing our destiny to a tragic conclusion by seeking to bring it to a neat and logical one ... This American experience is a refutation in parable of the whole effort to bring the vast forces of history under the control of any particular will, informed by a particular ideal ... [speaking of the communists] All such efforts are rooted in what seems at first glance to be a contradictory combination of voluntarism and determinism. These efforts are on the one hand excessively voluntaristic, assigning a power to the human will and the purity to the mind of some men which no mortal or group of mortals possesses. On the other, they are excessively deterministic since they regard most men as merely the creatures of an historical process. (Niebuhr 2008: 75, 79) The Irony of American History came out in January 1952, only months after the publication of Hannah Arendt's The Origins of Totalitarianism, a book that reached a conclusion similar to his. Fundamentalist political systems of thought, Arendt (1966: 467-9) wrote, are known for their scientific character; they combine the scientific approach with results of philosophical relevance and pretend to be scientific philosophy . .. Ideologies pretend to know the mysteries of the whole historical process—the secrets of the past, the intricacies of the present, the uncertainties of the future—because of the logic inherent in their respective ideas ... they pretend to have found a way to establish the rule of justice on earth ... All laws have become laws of movement. And she warned: Ideologies are always oriented toward history .... The claim to total explanation promises to explain all historical happenings ... hence ideological thinking becomes emancipated from the reality that we perceive with our five senses, and insists on a ' truer' reality concealed behind all perceptible things, dominating them from this place of concealment and requiring a sixth sense that enables us to become aware of it. ... Once it has established its premise, its point of departure, experiences no longer interfere with ideological thinking, nor can it be taught by reality. (Arendt 1966: 470) For Arendt as for Niebuhr, then, a virtue of liberal democracy was its relative lack of certitude in terms of faith in an iron ideology that rested on a pseudoscientific authority that its worldwide propagation would fulfill some mandate of history, or to put it more concretely, that the United States had been selected by the logic of historical development to expand the perimeter of democratic government and free market capitalism to the ends of the earth, and that in doing so it would serve not only its own basic national security needs but the peace of the world as well. True, in his address to the Congress asking for a declaration of war against Germany in 1917, Wilson had asserted, 'the world must be made safe for democracy. Its peace must be planted upon the tested foundations of political liberty.' (Link 1982: 533). Yet just what this meant and how it might be achieved were issues that were not resolved intellectually—at least not before the 1990s. Reinhold Niebuhr died in 1971, Hannah Arendt in 1975, some two decades short of seeing the 'fortunate vagueness' Niebuhr had saluted during their prime be abandoned by the emergence of what can only be called a ' hard liberal internationalist ideology', one virtually the equal of Marxism- Leninism in its ability to read the logic of History and prescribe how human events might be changed by messianic intervention into a world order where finally justice, freedom , and peace might prevail. The authors of this neo-liberal, neo-Wilsonianism: left and liberal academics. Their place of residence: the United States, in leading universities such as Harvard, Yale, Princeton, and Stanford. Their purpose: the instruction of those who made foreign policy in Washington in the aftermath of the Cold War. Their ambition: to help America translate its 'unipolar moment' into a 'unipolar epoch' by providing American leaders with a conceptual blueprint for making the world safe for democracy by democratising the world, thereby realizing through 'democratic globalism' the century-old Wilsonian dream—the creation of a structure of world peace. Their method: the construction of the missing set of liberal internationalist concepts whose ideological complexity, coherence, and promise would be the essential equivalence of MarxismLeninism, something most liberal internationalists had always wanted to achieve but only now seemed possible. Democratic globalism as imperialism in the 1990s The tragedy of American foreign policy was now at hand. Rather than obeying the strictures of a ' fortunate vagueness' which might check its ' messianic consciousness', as Niebuhr had enjoined, liberal internationalism became possessed of just what Arendt had hoped it might never develop, 'a scientific character ... of philosophic relevance' that 'pretend[s] to know the mysteries of the whole historical process,' that 'pretend[s] to have found a way to establish the rule of justice on earth ' (Niebuhr 2008: 74; Arendt 1966: 470). Only in the aftermath of the Cold War, with the United States triumphant and democracy expanding seemingly of its own accord to many comers of the world—from Central Europe to different countries in Asia (South Korea and Taiwan), Africa (South Africa), and Latin America (Chile and Argentina)—had the moment arrived for democracy promotion to move into a distinctively new mode, one that was self-confidently imperialist. Wilsonians could now maintain that the study of history revealed that it was not so much that American power had won the epic contest with the Soviet Union as that the appeal of liberal internationalism had defeated proletarian internationalism. The victory was best understood, then, as one of ideas, values, and institutions—rather than of states and leaders. In this sense, America had been a vehicle of forces far greater than itself, the sponsor of an international convergence of disparate class, ethnic, and nationalist forces converging into a single movement that had created an historical watershed of extraordinary importance. For a new world, new ways of thinking were mandatory. As Hegel has instructed us, 'Minerva's owl flies out at dusk' , and liberal scholars of the 1990s applied themselves to the task of understanding the great victories of democratic government and open market economies over their adversaries between 1939 and 1989. What, rather exactly, were the virtues of democracy that made these amazing successes possible? How, rather explicitly, might the free world now protect, indeed expand, its perimeter of action? A new concept of power and purpose was called for. Primed by the growth of think-tanks and prestigious official appointments to be 'policy relevant' , shocked by murderous outbreaks witnessed in the Balkans and Central Africa, believing as the liberal left did that progress was possible, Wilsonians set out to formulate their thinking at a level of conceptual sophistication that was to be of fundamental importance to the making of American foreign policy after the year 2000.6 The jewel in the crown of neo-liberal internationalism as it emerged from the seminar rooms of the greatest American universities was known as ' democratic peace theory'. Encapsulated simply as ' democracies do not go to war with one another', the theory contended that liberal democratic governments breed peace among themselves based on their domestic practices of the rule of law, the increased integration of their economies through measures of market openness, and their participation in multilateral organisations to adjudicate conflicts among each other so as to keep the peace. The extraordinary success of the European Union since the announcement of the Marshall Plan in 1947, combined with the close relations between the United States and the world's other liberal democracies, was taken as conclusive evidence that global peace could be expanded should other countries join ' the pacific union ', ' the zone of democratic peace'. A thumb-nail sketch cannot do justice to the richness of the argument. Political scientists of an empirical bent demonstrated conclusively to their satisfaction that 'regime type matters ', that it is in the nature of liberal democracies to keep the peace with one another, especially when they are integrated together economically. Theoretically inclined political scientists then argued that liberal internationalism could be thought of as ' non-utopian and non-ideological ', a scientifically validated set of concepts that should be recognized not only as a new but also a dominant form of conceptual ising the behaviour of states (Moravcsik 1997). And liberal political philosophers could maintain on the basis of democratic peace theory that a Kantian (or Wilsonian) liberal world order was a morally just goal for progressives worldwide to seek so that the anarchy of states, the Hobbesian state of nature, could be superseded and a Golden Age of what some dared call 'post-history' could be inaugurated (Rawls 1999). Yet if it were desirable that the world's leading states be democratised, was it actually possible to achieve such a goal? Here a second group of liberal internationalists emerged, intellectuals who maintained that the transition from authoritarian to democratic government had become far easier to manage than at earlier historical moments. The blueprint of liberal democracy was now tried and proven in terms of values, interests, and institutions in a wide variety of countries. The seeds of democracy could be planted by courageous Great Men virtually anywhere in the world. Where an extra push was needed, then the liberal world could help with a wide variety of agencies from the governmental (such as the Agency for International Development or the National Endowment for Democracy in the United States) to the non-governmental (be it the Open Society Institute, Human Rights Watch, Amnesty International, or Freedom House). With the development of new concepts of democratic transition, the older ideas in democratization studies of 'sequences' and ' preconditions' could be jettisoned. No longer was it necessary to count on a long historical process during which the middle class came to see its interests represented in the creation of a democratic state, no longer did a people have to painfully work out a social contract of tolerance for diversity and the institutions of limited government under the rule of law for democracy to take root. Examples as distinct as those of Spain, South Korea, Poland, and South Africa demonstrated that a liberal transformation could be made with astonishing speed and success. When combined, democratic peace theory and democratic transition theory achieved a volatile synergy that neither alone possessed. Peace theory argued that the world would benefit incalculably from the spread of democratic institutions, but it could not say that such a development was likely. Transition theory argued that rapid democratisation was possible, but it could not establish that such changes would much matter for world politics. Combined, however, the two concepts came to be the equivalent of a Kantian moral imperative to push what early in the Clinton years was called ' democratic enlargement' as far as Washington could while it possessed the status of the globe's sole superpower. The result would be nothing less than to change the character of world affairs that gave rise to war—international anarchy system and the character of authoritarian states—into an order of peace premised on the character of democratic governments and their association in multilateral communities basing their conduct on the rule of law that would increasingly have a global constitutional character. The arrogant presumption was, in short, that an aggressively liberal America suddenly had the possibility to change the character of History itself toward the reign of perpetual peace through democracy promotion. Enter the liberal jurists. In their hands a 'right to intervene' against states or in situations where gross and systematic human rights were being violated or weapons of mass destruction accumulated became a 'duty to intervene' in the name of what eventually became called a state 's 'responsibility to protect.' (lCISS 200 I). The meaning of 'sovereignty' was now transformed. Like pirate ships of old, authoritarian states could be attacked by what Secretary of State Madeleine Albright first dubbed a 'Community of Democracies', practicing ' muscular multilateralism' in order to reconstruct them around democratic values and institutions for the sake of world peace. What the jurists thus accomplished was the redefinition not only of the meaning of sovereignty but also that of 'Just War'. Imperialism to enforce the norms a state needed to honor under the terms of its 'responsibility to protect' (or 'R2P' as its partisans liked to phrase it) was now deemed legitimate. And by moving the locus of decision-making on the question of war outside the United Nations (whose Security Council could not be counted on to act to enforce the democratic code) to a League, or Community, or Concert of Democracies (the term varied according to the theorist), a call to arms for the sake of a democratising crusade was much more likely to succeed.

#### This drive to destroy non-liberal ways of life will culminate in extinction

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

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

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

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

The prevalence of these continuities between Frankfurter’s vision and contemporary judicial arguments raise serious concerns with today’s conceptual framework. Certainly, Frankfurter’s role during World War II in defending and promoting a number of infamous judicial decisions highlights the potential abuses embedded in a legal discourse premised on the specially-situated knowledge of executive officials and military personnel. As the example of Japanese internment dramatizes, too strong an assumption of expert understanding can easily allow elite prejudices—and with it state violence—to run rampant and unconstrained. For the present, it hints at an obvious question: How skeptical should we be of current assertions of expertise and, indeed, of the dominant security framework itself? One claim, repeated especially in the wake of September 11, has been that regardless of normative legitimacy, the prevailing security concept—with its account of unique knowledge, insulation, and hierarchy—is simply an unavoidable consequence of existing global dangers. Even if Herring and Frankfurter may have been wrong in principle about their answer to the question “who decides in matters of security?” they nevertheless were right to believe that complexity and endemic threat make it impossible to defend the old Lockean sensibility. In the final pages of the article, I explore this basic question of the degree to which objective conditions justify the conceptual shifts and offer some initial reflections on what might be required to limit the government’s expansive security powers. VI. CONCLUSION: THE OPENNESS OF THREATS The ideological transformation in the meaning of security has helped to generate a massive and largely secret infrastructure of overlapping executive agencies, all tasked with gathering information and keeping the country safe from perceived threats. In 2010, The Washington Post produced a series of articles outlining the buildings, personnel, and companies that make up this hidden national security apparatus. According to journalists Dana Priest and William Arkin, there exist “some 1271 government organizations and 1931 private companies” across 10,000 locations in the United States, all working on “counterterrorism, homeland security, and intelligence.”180 This apparatus is especially concentrated in the Washington, D.C. area, which amounts to “the capital of an alternative geography of the United States.”181 Employed by these hidden agencies and bureaucratic entities are some 854,000 people (approximately 1.5 times as many people as live in Washington itself) who hold topsecret clearances.182 As Priest and Arkin make clear, the most elite of those with such clearance are highly trained experts, ranging from scientists and economists to regional specialists. “To do what it does, the NSA relies on the largest number of mathematicians in the world. It needs linguists and technology experts, as well as cryptologists, known as ‘crippies.’”183 These professionals cluster together in neighborhoods that are among the wealthiest in the country—six of the ten richest counties in the United States according to Census Bureau data.184 As the executive of Howard County, Virginia, one such community, declared, “These are some of the most brilliant people in the world. . . . They demand good schools and a high quality of life.”185 School excellence is particularly important, as education holds the key to sustaining elevated professional and financial status across generations. In fact, some schools are even “adopting a curriculum . . . that will teach students as young as 10 what kind of lifestyle it takes to get a security clearance and what kind of behavior would disqualify them.”186 The implicit aim of this curriculum is to ensure that the children of NSA mathematicians and Defense Department linguists can one day succeed their parents on the job. In effect, what Priest and Arkin detail is a striking illustration of how security has transformed from a matter of ordinary judgment into one of elite skill. They also underscore how this transformation is bound to a related set of developments regarding social privilege and status—developments that would have been welcome to Frankfurter but deeply disillusioning to Brownson, Lincoln, and Taney. Such changes highlight how one’s professional standing increasingly drives who has a right to make key institutional choices. Lost in the process, however, is the longstanding belief that issues of war and peace are fundamentally a domain of common care, marked by democratic intelligence and shared responsibility. Despite such democratic concerns, a large part of what makes today’s dominant security concept so compelling are two purportedly objective sociological claims about the nature of modern threat. As these claims undergird the current security concept, by way of a conclusion I would like to assess them more directly and, in the process, indicate what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the U.S. faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create of world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states.187 Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. Thus, the best response is the further entrenchment of Herring’s national security state, with the U.S. permanently mobilized militarily to gather intelligence and to combat enemies wherever they strike—at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decisionmaking are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency (one armed with countless secret and public agencies as well as with a truly global military footprint)188 greatly outweigh the costs. Yet, although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are not objective empirical judgments but rather are socially complex and politically infused interpretations. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves riddled with ideological presuppositions and subjective biases. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that the question of who decides—and with it the issue of how democratic or insular our institutions should be—remains open as well. Clearly technological changes, from airpower to biological and chemical weapons, have shifted the nature of America’s position in the world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet, in truth they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers.189 But even if technological shifts make doomsday scenarios more chilling than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios tells us little about their likelihood or how best to address them. Indeed, these latter security judgments are inevitably permeated with subjective political assessments, assessments that carry with them preexisting ideological points of view—such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy. In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have—at times unwittingly—reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America’s post-World War II position of global primacy, one which today has only expanded following the Cold War. In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that “our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century,” was no longer “adequate” for the “20th- century nation.”190 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country’s “preeminen[ce] in political and military power.”191 Fulbright held that greater executive action and war-making capacities were essential precisely because the United States found itself “burdened with all the enormous responsibilities that accompany such power.”192 According to Fulbright, the United States had both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. Thus, rather than being purely objective, the American condition of permanent danger was itself deeply tied to political calculations about the importance of global primacy. What generated the condition of continual crisis was not only technological change, but also the belief that the United States’ own ‘national security’ rested on the successful projection of power into the internal affairs of foreign states. The key point is that regardless of whether one agrees with such an underlying project, the value of this project is ultimately an open political question. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion.193 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principal and overriding danger facing the country. According to the State Department’s Annual Country Reports on Terrorism, in 2009 “[t]here were just 25 U.S. noncombatant fatalities from terrorism worldwide” (sixteen abroad and nine at home).194 While the fear of a terrorist attack is a legitimate concern, these numbers—which have been consistent in recent years—place the gravity of the threat in perspective. Rather than a condition of endemic danger—requiring everincreasing secrecy and centralization—such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit ‘national security’ aims highlights just how entrenched Herring’s old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling. It also underscores a telling and often ignored point about the nature of modern security expertise, particularly as reproduced by the United States’ massive intelligence infrastructure. To the extent that political assumptions—like the centrality of global primacy or the view that instability abroad necessarily implicates security at home—shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. This means that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underscores that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge. If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of ‘expertise.’195 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threat to newspapers as a method of shaping the public debate.196 These ‘open’ secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making. But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm—the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’—marked fundamentally by epistemological uncertainty as opposed to verifiable fact—than policymakers admit. If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars—emphasizing new statutory frameworks or greater judicial assertiveness—is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants—danger too complex for the average citizen to comprehend independently—it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

### 1NC CP

#### Text: The Executive Branch of the United States should exercise its parole authority to release those imprisoned in Guantanamo Bay who have won their habeas corpus hearings in the Kiyemba v. Obama.

#### Parole solves – avoids the DA – it’s not a war powers fight.

Hernandez 11 (Ernesto A. Hernandez, Chapman University School of Law Professor of Law, “Kiyemba, Guantanamo, and Immigration Law: An Extraterritorial Constitution in a Plenary Power World”, Available at: <http://works.bepress.com/ernesto_hernandez/17>)

D. Parole: Political Limitations Trump Immigration Law’s Power to End Detentions

Under the executive’s authority, parole remains a viable legal option to release the five Uighurs from the base. With parole, the executive permits an alien to enter the United States without any particular visa or refugee status.210 The court in Kiyemba I discounted this option, claiming it requires that an alien must be applying for admission and that an alien refugee cannot qualify unless it is for “compelling reasons in the public interest.”211 This is troubling given parole’s flexibility and historic use. It has been used by the United States on various occasions when aliens did not have a designated legal right to enter the United States, including Hungarian refugees after 1956, Cuban and Southeast Asian refugees before the Refugee Act of 1980, Soviet Union nationals after 1988, and Cuban refugees in 1994.212 Presidents have used the power of parole to permit the entry of foreigners when visa categories did not neatly match up or were used up, at times allowing entry for large groups of foreigners.21

The court though overlooks how parole can easily remedy the problems of indefinite detention, detainees without any specific right to enter the United States, unclear extraterritorial reach of habeas remedies, and an ineffective habeas release order. Statutory law and migration practices, benefiting from a long history and case precedent, suggest that the Uighurs can be paroled in the United States. The problem is that the executive does not want to do so, given domestic political resistance and foreign relations concerns. If the appropriate departments of the executive branch worked to allow the Uighurs to enter the United States, they could easily be paroled without acting outside the authority of the Department of Homeland Security or State.

Developed by the administrative ingenuity of immigration officials early last century, parole is a remedy allowing a noncitizen to travel away from the border and immigration detention.214 It is currently provided for in INA section 212(d)(5),215 with its regulations in 8 C.F.R. § 212.5.216 The Uighurs arguably qualify for either of the two statutory justifications for parole, which are for “urgent humanitarian reasons” or “significant public benefit.”217 Their detention for nine years on a U.S. base, capture in and transport from Pakistan, and inability to return home or to third countries may meet the humanitarian and public benefit justifications. The regulations provide various examples of these justifications, involving juvenile, family, pregnancy, medical, and court appearance reasons.218 With parole for “urgent humanitarian reasons,” the United States could end their indefinite detention, which surely deprives them of important liberties. While their parole entry into the United States would result in the “significant public benefit” of ending this detention, it raises foreign relations and constitutional habeas problems. The most obvious way to craft a parole remedy would be to determine that their continued detention “is not in the public interest,” or that their entry into the United States fulfills a humanitarian need. This could be determined by officials authorized to grant parole.219 These are mostly Assistant Secretary and Director level officials in the Department of Homeland Security, also including district directors, special agents, and field directors.220 The regulations state that any parole justification is determined on a “case-by-case basis,”221 suggesting legal precedent or parole categories would not be created by such a remedy.

Political will is needed from the President or Secretary of Homeland Security to decide to parole the Uighurs into the United States, and so far this has been lacking, given the nonlegal context described below. These arguments assume what is in the public and court record. It is arguable that the executive branch, in the form of military, intelligence, homeland security, and foreign relations officials, has access to information justifying decisions to deny parole for the detainees. Parole is a remedy option provided that the alien does not “present a security risk” or “risk of absconding.”222 Information kept under seal may in theory suggest that their security or flight risk is likely. Similarly, the executive may find that the Uighurs’ parole into the United States could threaten diplomatic relations with China, and is thus inconsistent with the “public interest.”223 These two political determinations by the executive branch may preclude parole for these five men.

Regardless, the court in Kiyemba I quickly dismissed parole, even though the remedy is a legal option within the immigration law framework. The Court could have urged this option or have suggested that the executive explore it, instead of quickly reverting to plenary reasoning and simple statutory bars. Five men remain in detention indefinitely after they were brought against their will from Pakistan to Cuba. The Court justified detention on Guantánamo as legal within immigration law. But immigration law itself provides legal and established ways to permit entry in the United States. Parole is a flexible option that respects the separation of power concerns and political questions used to justify the plenary power doctrine.224 Parole’s legal codification, agency interpretation, and varied use for decades suggest that this remedy for the Uighurs could end indefinite detention and avoid encroaching on political authority.

If the executive did choose to parole these five men, it would be based on its political choices, weighing domestic and foreign relations issues. This option is consistent with immigration law practice and has been used historically, in situations such as Mezei and Knauff, when courts left an alien in indefinite exclusion or indefinite detention due to perceived foreign relations and national security concerns.225 Parole is a flexible and legal option applied for decades in situations like the ones faced by the Kiyemba detainees.

The Supreme Court has argued that parole developed as an administrative tool is necessary to avoid “needless confinement” and does not affect an alien’s immigration status.226 Since it eliminates detention for aliens who are not likely to abscond, it “reflects humane qualities of an enlightened civilization.”227 Parole is not equivalent to admission.228 The executive may require detailed conditions for any parole, including: assurances that the alien will appear in hearings or depart the United States when required to do so; a paid bond; counsel or sponsor to ensure their appearances and departure; community ties and known addresses of close relatives; and periodic reporting.229 Parole is not automatically renewed and may be terminated without written notice.230

### Solvency

#### 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

#### That turns the case—takes out modeling

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

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

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

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

Preventive Detention

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

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

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

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

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

### 1NC Legitimacy

#### They can’t solve --- Knowles says that a non-deferential Court is key to legitimacy. The premise of their advantage is that the Judiciary sent this signal with Boumedeine, and then reversed course and hollowed it out with Kiyemba. Fiat can guarantee the plan but not a consistent position against deference.

Knowles 9 [Spring, 2009, Robert Knowles is a Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

ABSTRACT: This Article uses insights from international relations theory to challenge the received wisdom that U.S. courts are incompetent to decide foreign affairs issues. Since September 11 in particular, proponents of broad executive power have argued that the Judiciary lacks the Executive’s expertise, speed, flexibility, uniformity, and political savvy necessary in foreign affairs. For these reasons, legal doctrine has long called for especially strong foreign affairs deference to the Executive. This Article argues that special deference is grounded in an outmoded version of the popular theory of international relations known as realism. Realism views the world as anarchic, nations as opaque to the outside world, and geopolitics as though a few great powers manage the international system through realpolitik and the balance of power. When incorporated into constitutional foreign affairs law, these realist tenets lead to a model that prioritizes executive branch competences over judicial ones, but offers little guidance on how to weigh foreign affairs effectiveness against other constitutional values such as liberty and accountability. The author proposes a new, “hegemonic” model of desired institutional competences in foreign affairs law that takes account of the transformed post-Cold War world. America dominates the globe militarily, has a political system accessible to outsiders, provides public goods for the world, and plays a dominant role in defining enforceable international law. This American hegemonic order will persist for some time despite threats posed by terrorism and the rise of powers such as China and Russia. Under the hegemonic model, courts serve America’s foreign affairs interests by maintaining stable interpretation of the law and bestowing legitimacy on acts of the political branches. Special deference is now unwarranted. This Article concludes by explaining why Boumediene v. Bush and other recent enemy combatant cases are consistent with the hegemonic model.

#### One case isn’t enough

SCHEPPELE 12 Laurance S. Rockefeller Professor of Sociology and Public Affairs in the Woodrow Wilson School and University Center for Human Values; Director of the Program in Law and Public Affairs, Princeton University [Kim Lane Scheppele, The New Judicial **Deference**, Boston University Law Review, 92 B.U. L. Rev. 89 2012]

Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial **deference**.7 **Deference** counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter anna silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another.8 After 9/11, it appears that **deference** is dead.

But, I will argue, **deference** is still alive and well. We are simply seeing a new sort of **deference** born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. 9 Suspected terrorists have received from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives.

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

#### US decline will not spark wars.

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

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

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

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

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

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

### 1NC Democracy

#### Their Suto evidence takes out their internal link --- concedes that Courts are not modeled now, and says the only way to change that is via judicial public diplomacy. It’s not enough to make different decisions, the Courts must change the way they broadcast them.

Ryan Suto, 7/15/2011. Pursuing a joint degree at Syracuse University, and will graduate with degrees in law, post-conflict reconstruction, international relations and public relations. He is a recent graduate of The Pennsylvania State University with degrees in political science and philosophy. “Judicial Diplomacy: The International Impact of the Supreme Court,” The Jurist, http://jurist.org/dateline/2011/07/ryan-suto-judicial-diplomacy.php.

The reasons for the American Revolution were submitted to a candid world in the Declaration of Independence. Later, these values were enshrined in the Constitution and the Bill of Rights. These distinctly American works are among the most influential legal documents of the modern era. Nonetheless, over the course of two centuries that once candid world has changed greatly. The influence of the US, both legally and otherwise, has waxed and, more recently, waned. However, if the US wishes to maintain its position as one of the world's leading legal systems, the nation's Supreme Court could stand not only to be more cognizant of the impact its decisions have in legal systems all over the world, **it could stand to work to maximize that impact**.

To enhance American legal influence, **the Supreme Court must engage in** what can be termed as **public diplomacy**. Public diplomacy can be defined as the image of a state or its people, as maintained by a government, organization or people. As such, the Court should endeavor to facilitate the understanding of its decisions, which are used to explain and test US legal values the world over. The world currently faces challenges that are inherently global in nature. For example, the legal questions associated with WikiLeaks, the Arab Spring and Internet neutrality and censorship, are all matters that transcend borders. While the international nature of these issues proves political and legal isolationism faulty, hard power intervention also has grave shortcomings. As such, the Court's ability to indirectly apply legal force and influence presents itself as an attractive alternative, and it should be maximized accordingly.

The US has its greatest potential for influence in nations drafting new constitutions, forming new governments and otherwise attempting to progress and modernize. In these countries legal foundations are often still being set, making them more likely to look to foreign decisions for guidance and precedent. The fact that many foreign courts have cited US Supreme Court opinions demonstrates their influence beyond US borders. For example, quite recently India's Supreme Court found a constitutional right to counsel, citing many Supreme Court decisions as precedent. In its own precedential decision, the Supreme Court of India wrote, "[i]n our opinion, a criminal case should not be decided against the accused in the absence of counsel. We are fortified in the view we are taking by a decision of the US Supreme Court in Powell v. Alabama." The Court further cited Gideon v. Wainwright and Brewer v. Williams in its holding.

Nonetheless, foreign court decisions that cite to the Supreme Court have generally declined. This likely reflects either a decreased foreign interest in the US legal system or **the US's decreased interest in public legal diplomacy**. Either way, it remains important that the US recover its jurisprudential influence, as this is a tool too valuable to lose.

First Amendment protections in general and freedom of speech in particular, provides an illustration of how the Court may utilize public diplomacy to expand the influence of the US legal tradition. In legal terms, the US has only arrived at its current approach to the First Amendment in the last 50 years, and the meaning of those 45 words is still evolving. However, in that time the US has been at the forefront of developing human rights such as freedom of expression and individual liberty. During the twentieth century these legal principles have been our greatest and most valuable export. For example, the Court expressed the extensive protection of speech and acts offered by the First Amendment in its 1989 decision, Texas v. Johnson. In Johnson, the Court held that the First Amendment protected the burning of the US flag as a means of protest. Justice William Brennan, writing for the majority, stated that "[t]he way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong." The Court voiced to the world that disagreeable and offensive speech must be tolerated as freedom of expression and the protection of individual liberties are at the core of a free society.

The vital discussion of societal values was at the forefront of the Johnson decision, and **it is this exact discussion that is absent from the current Court's decisions**. For example, Snyder v. Phelps, a case decided this year, presented a perfect opportunity to engage in public diplomacy with regard to free speech. In this case, tort damages were sought against the Westboro Baptist Church for protesting at a soldier's funeral, spouting hate speech at the burial itself and on the Internet. While this case was viewed as controversial by the media and the general public, it garnered strong consensus on the Court. In an 8-1 decision, the majority held that the First Amendment protects those who stage peaceful protests near the funeral of a military service member from tort liability.

The majority opinion written by Chief Justice John Roberts is certainly on firm ground legally speaking. However, he and the other justices that joined his opinion missed an excellent opportunity to engage in public diplomacy. At a time where many post-conflict, developing and emerging societies are grappling with the concept and consequences of free speech, **the Court would do well to offer non-doctrinal reasons for ideologically illustrative decisions**. Understandably, the idea of allowing the actions of the Westboro Baptist Church to go unpunished in a society that values respect and order over individual liberties seems offensive and repugnant. However, rather than engaging in constructive dialogue or explaining why the US values free speech, the Court does little more than state that speech is powerful and that in spite of the pain it can cause, this nation has chosen a path that protects it. The Court insufficiently explains the value of free speech. While previous decisions of the Court have noted how important free speech is for the development and maintenance of a healthy society, political vibrancy and open and honest debate, the Court's current decisions avoid such commentary.

**---Cal’s Card Starts Here---**

The Court is certainly the best institution to explain to scholars, governments, lawyers and lay people alike the enduring legal values of the US, why they have been chosen and how they contribute to the development of a stable and democratic society. A return to the mentality that one of America's most important exports is its legal traditions would certainly benefit the US and stands to benefit nations building and developing their own legal traditions, and our relations with them. Furthermore, it stands to increase the influence and higher the profile of the bench. The Court already engages in the exercise of dispensing justice and interpreting the Constitution, and to deliver its opinions with an eye toward their diplomatic value would take only minimal effort and has the potential for high returns. While the Court is indeed the best body to conduct legal diplomacy, it has been falling short in doing so in recent sessions.

We are at a critical moment in world history. People in the Middle East and North Africa are asserting discontent with their governments. Many nations in Africa, Asia, and Eurasia are grappling with new technologies, repressive regimes and economic despair. With the development of new countries, such asSouth Sudan, the formation of new governments, as is occurring in Egypt, and the development of new constitutions, as is occurring in Nepal, it is important that the US welcome and engage in legal diplomacy and informative two-way dialogue. As a nation with lasting and sustainable legal values and traditions, the Supreme Court should be at the forefront of public legal diplomacy. With each decision, the Supreme Court has the opportunity to better define, explain and defend key legal concepts. This is an opportunity that should not be wasted.

**---Cal’s Card Ends Here---**

#### Their CJA internal link proves our one-case not enough argument --- it’s an Amici from RASUL v Bush that is using the same language of “this case is a key test” that Schulz uses for Kiyemba.

**CJA 4**, Center for Justice and Accountability

[OCTOBER 2004, The Center for Justice & Accountability (“CJA”) seeks, by use of the legal systems, to deter torture and other human rights abuses around the world., “BRIEF OF the CENTER FOR JUSTICE AND ACCOUNTABILITY, the INTERNATIONAL LEAGUE FOR HUMAN RIGHTS, and INDIVIDUAL ADVOCATES for the INDEPENDENCE of the JUDICIARY in EMERGING DEMOCRACIES as AMICI CURIAE IN SUPPORT OF PETITIONERS”, http://www.cja.org/downloads/Al-Odah\_Odah\_v\_US\_\_\_Rasul\_v\_Bush\_CJA\_Amicus\_SCOTUS.pdf]

SUMMARY OF ARGUMENT For more than two hundred years, this Court has stood as a bulwark against unilateral action by the executive. In so doing, this Court has fulfilled its constitutional obligations. Still more, this Court has helped to make the United States a model for emerging democracies seeking to secure fundamental rights from encroachment by unchecked executive power. This case threatens to break that fundamental line of defense against the tyranny of executive power. The executive claims that it can put its actions beyond the reach of the judiciary by holding people in the United States Naval Base at Guantánamo Bay, Cuba. This effort to place itself outside judicial control is fundamentally inconsistent with the structure of the U.S. government. The Constitution divides federal power among three co-equal branches, and no branch has the power to eliminate, unilaterally, the power of the others to review and, if necessary, correct its actions. Although this Court has at times deferred to the decisions of the executive and legislature when they act together, it has never abdicated its constitutional obligation to review the unilateral actions of either the executive or the legislature. Domestically, this case therefore represents an important test of this country’s commitment to the independence of the judiciary. This is chiefly, but not solely, a domestic concern. People around the world have long noted that the United States’ experiment with a tripartite government and an independent judiciary has, with some notable and regretted missteps, 7 succeeded in living up to the ideals expressed in its Constitution. They have noted that the federal judiciary, specifically this Court, has managed to guarantee civil liberties even in times of strife. This success has made the U.S. system a model for countries around the world, particularly countries seeking to construct a civil society after decades of tyranny and oppression. However, these attempts to construct civil societies are consistently under assault. And as in this case, often the lead argument for dismantling such systems is national security. Indeed, some would-be democracies already have begun to justify prolonged detentions without judicial review on the basis of the detentions at Guantánamo Bay. Amici urge this Court to exercise jurisdiction over the claims asserted by the detainees at Guantánamo Bay not only because it is the only result consistent with more than two hundred years of legal precedent in this country, but also because the people of countries around the world look to the United States to uphold the ideals so elegantly reflected in its Constitution. When the United States fails to live up to these ideals, the cause of individual rights is diminished not just here but everywhere.

#### None of their evidence establishes a warrant for reverse causality --- sure, other countries have cited Guantanamo to justify their detention actions. Countries have an incentive to rationalize decisions they have already made. If the U.S. ended Gitmo, they would simply find another justification. When push comes to shove, autocrats gonna autocrat.

#### Their Uighurs impact is ridiculous. The Davis card starts out with “Alternate Futures” and then says “the scenario most worrisome to the Chinese would be.” It doesn’t actually establish that this scenario is likely. Also, can’t solve perceptions of unequal economic development or instability in neighboring countries.

Davis 8, division director and professor of liberal arts and international studies at Colorado School of Mines, Dr. Elizabeth Van Wie, 2008, "Uyghur Muslim Ethnic Separatism in Xinjiang, China," Asian Affairs: An American Review, 2008, Vol. 35, Issue 1, pg. 15-30, ebsco

Alternative Futures¶ The scenario most worrisome to the Chinese would be the Uyghur Muslim movement in Xinjiang externally joining with international Muslim movements throughout Asia and the Middle East, bringing an influx of Islamic extremism and a desire to challenge the central government. The Chinese also fear the Uyghur movement could internally radicalize other minorities, whether the ethnic Tibetans or the Muslim Hui. Beijing is currently successfully managing the separatist movements in China, but the possibility of increased difficulty is **linked partly to elements outside Chinese control**, such as political instability or increased Islamic extremism in neighboring Pakistan, Afghanistan, Tajikistan, Kyrgyzstan, and Kazakhstan. Chinese policies and reactions, however, will largely determine the progress of separatist movements in China. If “strike hard” campaigns are seen to discriminate against nonviolent Uyghurs and if the perception that economic development in Xinjiang aids Han Chinese at the expense of Uyghurs, the separatist movements will be fueled.¶ The whole region has concerns about growing Uyghur violence. Central Asian countries, especially those with sizable Uyghur minorities, already worry about Uyghur violence and agitation. Many of the regional governments, especially secular authoritarian governments in South Asia and Central Asia, are worried about the contagion of increasing Muslim radicalization. The governments of Southeast Asia are also worried about growing radical networks and training camps, but they also fear the idea of a fragmenting China. Political instability in China would impact all of Asia.

#### Also, this card says it “would impact all of Asia.” That is not the same as “cause an Asian war.”

#### Their Kersch democracy evidence is not defending an argument, it’s just summarizing other positions. Here is the part of their article from right before explaining the “realist” perspective.”

**Kersch 6, Assistant Professor of Politics**

[2006, Ken I. Kersch, Assistant Professor of Politics, Princeton University. B.A., Williams; J.D., Northwestern; Ph.D., Cornell. Thanks to the Social Philosophy and Policy Center at Bowling Green State University, where I was a visiting research scholar in the fall of 2005, and to the organizers of, and my fellow participants in, the Albany Law School Symposium, Albany Law School, “The Supreme Court and international relations theory.”, http://www.thefreelibrary.com/The+Supreme+Court+and+international+relations+theory.-a0151714294]

A. Realism
Realists are international relations traditionalists. They believe in the primacy of sovereignty and the centrality of nation-states in the international sphere. (18) Moreover, they look at these states as, at the most basic level, power-seeking and interest-pursuing entities. (19) "At realism's core is the belief that international affairs is a struggle for power among self-interested states." (20) This perspective is a Hobbesian vision. (21) As such, it sees contention, conflict, and struggle as central to the international order. (22) It also sees all three as perpetual--and inevitable. (23)
Traditional foreign policy realism has little or no place for values and normative considerations in its outlook. (24) Most realists treat states as essentially interchangeable, power-seeking entities, all of which play by the same set of rules--rules that apply to states qua states. (25) So far as their behavior in the international arena is concerned, international relations realists do not draw any significant distinctions between democratic and non-democratic states. (26)
This does not mean that all thinkers who begin within the realist framework find values to be irrelevant. Foreign policy realism in certain incarnations (that is, in its less pure forms) can have a prescriptive, normative dimension. For realists, it is perfectly legitimate for states to pursue the interests of their citizens--and sometimes contentiously, in the international arena. (27) It is "legitimate," though, not because it is morally right as a matter of the application, a priori, of some moral theory of proper behavior, but because that is all states can do and will do, either because that behavior is inherent in the nature of a state, (28) or because the international system is structured so as to require that they behave that way. (29) We might even say that not only do states behave this way, they should behave this way. Working to advance the self-interest of the people of a sovereign state is part of the normal duties of governments, in addition to being part of their ordinary practice. This duty is, of course, all the more justifiable (albeit on non-realist grounds) if it involves democratic states. (30)
Foreign policy realists are believers in realpolitik. (31) They tend to be skeptical about the ability of international law and international institutions to constrain states seeking to advance their own interests. They tend to view both as instruments of powerful, and power-seeking, states. Those states will leverage international law and international institutions as much as possible to yield the maximum benefits for themselves while, at the same time, manipulating them to constrain challenges to their interests from rival states in the international arena. In this Hobbesian vision, international relations realists tend to view "hard" power--power exercised most importantly by direct or implied military or economic coercion--as, by and large, the real power in international politics. (32)
Courts and judges, who have neither "the sword or the purse ... but merely judgment," (33) are not likely to loom large as important actors in a realist foreign policy vision that places its greatest emphasis on hard power rather than on law. Realists are likely to consider arguments about judicial globalization as something of asideshow. This is especially the case where so-called "values" issues are at stake. Realists will tend to see those issues as implicating rhetoric more than reality. Judges may tend towards jawboning on these matters. In the end, however, that jawboning is likely to be of little concrete effect, at least so far as international relations are concerned. (34)
Foreign policy realists might favor judicial globalization--but only where the lines between some versions of it and liberalism become porous. If one holds to the view that, in the post-War era, an array of "constitutional" international institutions like the International Monetary Fund, Bretton Woods, and the World Bank were created and serve to advance the interests of the era's hegemonic state--the United States--one could conclude that a globalized American judiciary is one way of augmenting American influence throughout the world, and hence American power. From this perspective, a preoccupation by opponents of the citation by American judges of foreign practices and precedents emerging from within the hegemonic state can seem rather narrow-minded, and, indeed, inverted. The cost of these sometimes glancing references in Supreme Court opinions (35) (which few take to be matters of binding law) (36) is relatively minimal. At the same time, the benefits of having American judges working with their counterparts overseas more routinely are clear: such interactions will work to expand American influence outwards. Put otherwise, realists will see American judges operating globally as agents of American power. To be sure, a realist--who looks at the world through the prism of force--would likely be skeptical about the ability of American judges to persuade judges in other states to adopt policies that advance American interest against the interest of their own countries. Judges, after all, wield "soft" rather than "hard power"--that is, they work by providing information, prestige, and persuasion. (37) That said, while realists might not place any great faith in an increasingly globalized judiciary, they might not view it as any great danger, either.
Of course, realists might just as easily view things from precisely the opposite perspective. Realists are the chief proponents of traditional "balance of power" theory in international relations. (38) As described by Jack Snyder, "[s]tandard realist doctrine predicts that weaker states will ally to protect themselves from stronger ones and thereby form and reform a balance of power." (39) As such, realists could just as likely see efforts to appeal to international law, international institutions, and emerging global standards as means used by weaker and rival powers (such as the European Union) to constrain the United States. (40) The manifestations of such dynamics, however--and they are particularly relevant in the courts--would not fit readily into standard definitions of realism. Snyder writes:

 The United States' strained relations with Europe offer ambiguous evidence [for the descriptive and predictive value of foreign policy realism]: French and German opposition to recent U.S. policies could be seen as classic balancing, but they do not resist U.S. dominance militarily. Instead, these states have tried to undermine U.S. moral legitimacy and constrain the superpower in a web of multilateral institutions and treaty regimes--not what standard realist theory predicts. (41)
In the end it is hard to imagine realists believing that American judges (who are, after all, state actors) would ultimately act in the interest of outside states seeking to challenge and constrain the pursuit of American interests, at least in the long term. Federal judges may be relatively independent so far as government actors go. (42) But if they appear to be acting against American interests in the service of foreign powers, pressure will nevertheless be brought to bear on them. The recent enthusiasm on the Supreme Court for citing foreign practices and precedent has sparked both public criticism and, more concretely, suggestions that, were these trends to continue and develop, impeachment might be an option. (43) As this behavior becomes more prominent, political parties will take a position on it in increasingly public ways. If judges come to be perceived as siding with foreign powers (like the Europeans) in balance of power situations, appointees for the Court will be vetted for their views on the matter and questioned about it in their confirmation hearings before the U.S. Senate--just as Chief Justice John Roberts and Associate Justice Samuel Alito were vetted during their confirmation hearings. (44)
One of the conceptual problems here, of course, is determining when a globalized American judge is acting against United States interests by alluding to foreign practices and precedents in domestic constitutional decisions. There is a certain circularity in arriving at the determination. If one starts from the realist presumption that state actors (including judges) will, ultimately, and on balance, act in the state's interest in the international sphere, then whatever a judge does will be viewed, by definition, as in the state's interest. (45) If an American judge like Antonin Scalia rejects global standards, or even global references, for example, in holding the death penalty for juveniles (46) or the mentally retarded to be constitutional, (47) or holding laws restricting hate speech unconstitutional, (48) he can be presumed to be defending the prerogatives of American sovereignty, power, and interest. If that same judge consults foreign practices and precedents, but ultimately rejects their applicability to the case before him (what Anne-Marie Slaughter has called "informed divergence" (49)), he can also be seen to be acting in America's interest. And if the judge follows the foreign practice or precedent, and in the process pleases transnational activists, the officials of international institutions, and diplomats and judges in foreign capitals, he can also be seen as advancing American interests. (50) This is particularly the case for that subset of realists who believe that power can be pressed too far, that part of the strategy behind staying on top as a state involves the judicious forswearing of power, in cases in which that helps to maintain one's dominance. (51)
Foreign policy liberals and foreign policy constructivist/idealists (to be discussed next) have a place in their views for courts and judges, and consider their role in the emerging international order as a significant one. Foreign policy realists do not. Moreover, even to the degree that (what might be a non-traditional) realist vision did take courts and judges and international law and institutions more seriously, it is not clear whether realism would favor judicial globalization or oppose it. Given its general skepticism about those institutions, its defense of sovereignty, and its emphasis on hard power, realists are more likely than not to oppose that globalization. But, for the most part, the bottom line for international relations realists is that courts and judges are likely to be beside the point. The Supreme Court's recent doodlings and gestures in this area are of no real significance--at least so far as the things international relations realists care most about are concerned. They are by no means beside the point, however, for international relations liberals.

#### No Asia wars -- international organizations and stability.

Desker 8 [Barry, Dean of the S Rajaratnam School of International Studies, At the IISS-JIIA Conference 2-4 June 2008, “Why War is Unlikely in Asia: Facing the Challenge from China”, http://www.iiss.org/conferences/asias-strategic-challenges-in-search-of-a-common-agenda/conference-papers/why-war-in-asia-remains-unlikely-barry-desker/]

War in Asia is thinkable but it is unlikely. The Asia-Pacific region can, paradoxically, be regarded as a zone both of relative insecurity and of relative strategic stability**.** On the one hand, the region contains some of the world’s most significant flashpoints – the Korean peninsula, the Taiwan Strait, the Siachen glacier – where **tensions** between nations could escalateto the point of resulting in a major war. The region is replete with border issues, the site of acts of terrorism (the Bali bombings, Manila superferry bombing, Kashmir, etc.), and it is an area of overlapping maritime claims (the Spratly Islands, Diaoyutai islands, etc). Finally, the Asia-Pacific is an area of strategic significance, sitting astride key sea lines of communication (SLOCS) and important chokepoints. Nevertheless, the Asia-Pacific region ismore stablethan one might believe. Separatism remains a challenge but the break-up of states is unlikely. Terrorism is a nuisance but its impact is contained. The North Korean nuclear issue, while not fully resolved, is at least moving toward a conclusionwith the likely denuclearization of the peninsula. Tensions between China and Taiwan, while always just beneath the surface, seem unlikely to erupt in open conflict (especially after the KMT victories in Taiwan). The region also possesses significant multilateral structures such as the Asia-Pacific Economic Cooperation (APEC) forum, the Shanghai Cooperation Organization (SCO), the nascent Six Party Talks forum and, in particular, ASEAN, and institutions such as the EAs, ASEAN + 3, ARF which ASEAN has conceived. Although the United States has been the hegemon in the Asia-Pacific since the end of World War II, it will probably not remain the dominant presence in the region over the next 25 years. A rising China will pose the critical foreign policy challenge, probably more difficult than the challenge posed by the Soviet Union during the Cold War. This development will lead to the most profound change in the strategic environment of the Asia-Pacific. On the other hand, the rise of China does not automatically mean that conflict is more likely. First, the emergence of a more assertive China does not mean a more aggressive China. Beijing appears content to press its claims peacefully (if forcefully), through existing avenues and institutions of international relations. Second, when we look more closely at the Chinese military buildup, we find that there may be less than some might have us believe, and thatthe Chinese war machine is not quite as threatening – as some might argue. Instead of Washington perspectives shaping Asia-Pacific affairs, the rise of China is likely to see a new paradigm in international affairs – the “Beijing Consensus” – founded on the leadership role of the authoritarian party state, a technocratic approach to governance, the significance of social rights and obligations, a reassertion of the principles of national sovereignty and non-interference, coupled with support for freer markets and stronger regional and international institutions. The emphasis is on good governance. Japan fits easily in this paradigm. Just as Western dominance in the past century led to Western ideas shaping international institutions and global values, Asian leaders and Asian thinkers will increasingly participate in and shape the global discourse, whether it is on the role of international institutions, the rules governing international trade or the doctrines which under-gird responses to humanitarian crises. An emerging Beijing Consensus is not premised on the rise of the ‘East’ and decline of the ‘West’, as sometimes seemed to be the sub-text of the earlier Asian values debate. I do not share the triumphalism of my friends Kishore Mahbubani and Tommy Koh. However, like the Asian values debate, this new debate reflects alternative philosophical traditions. The issue is the appropriate balance between the rights of the individual and those of the state. This debate will highlight the shared identity and shared values between China and the states in the region. I do not agree with those in the US who argue that Sino-US competition will result in “intense security competition with considerable potential for war” in which most of China’s neighbours “will join with the United States to contain China’s power.”[1] These shared values are likely to reduce the risk of conflict and result in regional pressure for an accommodation with China and the adoption of policies of engagement with China, rather than confrontation with an emerging China. China is increasingly economically inter-dependent, part of a network of over-lapping cooperative regional institutions. In Asia, the focus is on economic growth and facilitating China’s integration into regional and global affairs. An interesting feature is that in China’s interactions with states in the region, China is beginning to be interested in issues of proper governance, the development of domestic institutions and the strengthening of regional institutional mechanisms. Chinese policy is not unchanging, even on the issue of sovereignty. For example, there has been an evolution in Chinese thinking on the question of freedom of passage through the Straits of Malacca and Singapore. While China supported the claims of the littoral states to sovereign control over the Straits when the Law of the Sea Convention was concluded in 1982, China’s increasing dependence on imported oil shipped through the Straits has led to a shift in favour of burden-sharing, the recognition of the rights of user states and the need for cooperation between littoral states and user states. Engagement as part of global and regional institutions has resulted in revisions to China’s earlier advocacy of strict non-intervention and non-interference. Recent Chinese support for global initiatives in peace-keeping, disaster relief, counter-terrorism, nuclear non-proliferation and anti-drug trafficking, its lack of resort to the use of its veto as a permanent member of the UN Security Council and its active role within the World Trade Organisation participation in global institutions can be influential in shaping perceptions of a rising China. Beijing has greatly lowered the tone and rhetoric of its strategic competition with the United States**,** actions which have gone a long way toward reassuring the countries of Southeast Asia of China’s sincerity in pursuing a non-confrontational foreign and security strategy. Beijing’s approach is significant as most Southeast Asian states prefer not to have to choose between alignment with the US and alignment with China and have adopted ‘hedging’ strategies in their relationships with the two powers. Beijing now adopts a more subtle approach towards the United States: not directly challenging US leadership in Asia, partnering with Washington where the two countries have shared interests, and, above all, promoting multilateral security processes that, in turn, constrain US power, influence and hegemony in the Asia-Pacific. The People’s Liberation Army (PLA) is certainly in the midst of perhaps the most ambitious upgrading of its combat capabilities since the early 1960s, and it is adding both quantitatively and qualitatively to its arsenal of military equipment. Its current national defence doctrine is centered on the ability to fight “Limited Local Wars”. PLA operations emphasize preemption, surprise, and shock value, given that the earliest stages of conflict may be crucial to the outcome of a war. The PLA has increasingly pursued the acquisition of weapons for asymmetric warfare. The PLA mimics the United States in terms of the ambition and scope of its transformational efforts – and therefore challenges the U.S. military at its own game. Nevertheless, we should note that China, despite **a “deliberate and focused course** of military modernization,” is still at least two decades behind the United States in terms of defence capabilities and technology. There is very little evidence that the Chinese military is engaged in an RMA-like overhaul of its organizational or institutional structures. While the Chinese military is certainly acquiring new and better equipment, its RMA-related activities are embryonic and equipment upgrades by themselves do not constitute an RMA. China’s current military buildup is still more indicative of a process of evolutionary, steady-state, and sustaining – rather than disruptive or revolutionary – innovation and change. In conclusion, war in the Asia-Pacific is unlikely but the emergence of East Asia, especially China, will require adjustments by the West, just as Asian societies have had to adjust to Western norms and values during the American century. The challenge for liberal democracies like the United States will be to embark on a course of self-restraint.

## \*\*\* 2NC

### 2NC Impact

#### Colonialism is an unacceptable ethical violation. You should refuse to vote affirmative regardless of the good they claim to achieve.

Nermeen Shaikh, @ Asia Source, 7 [*Development* 50, “Interrogating Charity and the Benevolence of Empire,” Palgrave-Journals]

It would probably be incorrect to assume that the principal impulse behind the imperial conquests of the 18th and 19th centuries was charity. Having conquered large parts of Africa and Asia for reasons other than goodwill, however, countries like England and France eventually did evince more benevolent aspirations; the civilizing mission itself was an act of goodwill. As Anatol Lieven (2007) points out, even 'the most ghastly European colonial project of all, King Leopold of Belgium's conquest of the Congo, professed benevolent goals: Belgian propaganda was all about bringing progress, railways and peace, and of course, ending slavery'. Whether or not there was a general agreement about what exactly it meant to be civilized, it is likely that there was a unanimous belief that being civilized was better than being uncivilized—morally, of course, but also in terms of what would enable the most in human life and potential. But what did the teaching of this civility entail, and what were some of the consequences of changes brought about by this benevolent intervention? In the realm of education, the spread of reason and the hierarchies created between different ways of knowing had at least one (no doubt unintended) effect. As Thomas Macaulay (1935) wrote in his famous Minute on Indian Education, We must at present do our best to form a class who may be interpreters between us and the millions whom we govern; a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect. To that class we may leave it to refine the vernacular dialects of the country, to enrich those dialects with terms of science borrowed from the Western nomenclature, and to render them by degrees fit vehicles for conveying knowledge to the great mass of the population. This meant, minimally, that English (and other colonial languages elsewhere) became the language of instruction, explicitly creating a hierarchy between the vernacular languages and the colonial one. More than that, it meant instructing an elite class to learn and internalize the culture—in the most expansive sense of the term—of the colonizing country, the methodical acculturation of the local population through education. As Macaulay makes it clear, not only did the hierarchy exist at the level of language, it also affected 'taste, opinions, morals and intellect'—all essential ingredients of the civilizing process. Although, as Gayatri Chakravorty Spivak points out, colonialism can always be interpreted as an 'enabling violation', it remains a violation: the systematic eradication of ways of thinking, speaking, and being. Pursuing this line of thought, Spivak has elsewhere drawn a parallel to a healthy child born of rape. The child is born, the English language disseminated (the enablement), and yet the rape, colonialism (the violation), remains reprehensible. And, like the child, its effects linger. The enablement cannot be advanced, therefore, as a justification of the violation. Even as vernacular languages, and all habits of mind and being associated with them, were denigrated or eradicated, some of the native population was taught a hegemonic—and foreign—language (English) (Spivak, 1999). Is it important to consider whether we will ever be able to hear—whether we should not hear—from the peoples whose languages and cultures were lost? The colonial legacy At the political and administrative levels, the governing structures colonial imperialists established in the colonies, many of which survive more or less intact, continue, in numerous cases, to have devastating consequences—even if largely unintended (though by no means always, given the venerable place of divide et impera in the arcana imperii). Mahmood Mamdani cites the banalization of political violence (between native and settler) in colonial Rwanda, together with the consolidation of ethnic identities in the wake of decolonization with the institution and maintenance of colonial forms of law and government. Belgian colonial administrators created extensive political and juridical distinctions between the Hutu and the Tutsi, whom they divided and named as two separate ethnic groups. These distinctions had concrete economic and legal implications: at the most basic level, ethnicity was marked on the identity cards the colonial authorities introduced and was used to distribute state resources. The violence of colonialism, Mamdani suggests, thus operated on two levels: on the one hand, there was the violence (determined by race) between the colonizer and the colonized; then, with the introduction of ethnic distinctions among the colonized population, with one group being designated indigenous (Hutu) and the other alien (Tutsi), the violence between native and settler was institutionalized within the colonized population itself. The Rwandan genocide of 1994, which Mamdani suggests was a 'metaphor for postcolonial political violence' (2001: 11; 2007), needs therefore to be understood as a natives' genocide—akin to and enabled by colonial violence against the native, and by the new institutionalized forms of ethnic differentiation among the colonized population introduced by the colonial state. It is not necessary to elaborate this point; for present purposes, it is sufficient to mark the significance (and persistence) of the colonial antecedents to contemporary political violence. The genocide in Rwanda need not exclusively have been the consequence of colonial identity formation, but does appear less opaque when presented in the historical context of colonial violence and administrative practices. Given the scale of the colonial intervention, good intentions should not become an excuse to overlook the unintended consequences. In this particular instance, rather than indulging fatuous theories about 'primordial' loyalties, the 'backwardness' of 'premodern' peoples, the African state as an aberration standing outside modernity, and so forth, it makes more sense to situate the Rwandan genocide within the logic of colonialism, which is of course not to advance reductive explanations but simply to historicize and contextualize contemporary events in the wake of such massive intervention. Comparable arguments have been made about the consolidation of Hindu and Muslim identities in colonial India, where the corresponding terms were 'native' Hindu and 'alien' Muslim (with particular focus on the nature and extent of the violence during the Partition) (Pandey, 1998), or the consolidation of Jewish and Arab identities in Palestine and the Mediterranean generally (Anidjar, 2003, 2007).

#### Their magnitude and escalation claims support an imperial paradigm of war against illiberal ways of life. Narratives of global vulnerability and extinction support recolonization by the global North.

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With the ending of the Cold War, the steady increase in humanitarian disasters plus the organizational imperative of a growing international rescue industry have helped justify a step-change in humanitarian, development and peace interventionism—indeed, in all forms of liberal interventionism. The permanent emergency of adaptive self-reliance provides a backdrop for the now well-rehearsed cartography of breakdown and anarchy in the global borderlands (Kaplan, 1994). It includes the discovery of livelihood wars fought by non-state actors on and through the modalities of subsistence, wars where the endemic abuse of human rights is part of the fabric of conflict itself (Le Billon, 2000). Such wars have generated their own narratives of state failure and state fragility (DFID, 2005), together with the associated fears of uncontrolled refugee surges (Cabinet Office, 2008). At the same time, these ‘ungoverned spaces’ are argued to lend themselves to capture and occupation by terrorist networks hostile to Western interests (Development Assistance Committee, 2003). This endemic reimagining of underdevelopment as dangerous, however, also renders self-reliance ambiguous. The liberal way of development privileges adaptive self-reliance. Importantly, however, this is a particular form of self-reliance, namely, those modes of existence and lines of change deemed to be safe or appropriate. Like beauty, sustainability is in the eye of the beholder. In practice, sustainability denotes internationally acceptable and pacific forms of self-reliance. It is the self-reliance of NGO-audited microcredit projects, legal forms of economic self-help, or the planting of commercial crops as substitutes for narcotics. These are approved forms of adaptive self-reliance. However, the reimagining of underdevelopment as dangerous in, for example, the literature on war economies (Kaldor, 1999) or descriptions of international criminal networks (Castells, 1998), points to another more challenging and edgy form of selfreliance. This is adaptive self-reliance as radical autonomy. It signals the discovery of effective means of existence beyond states and free of aid agencies. It includes novel forms of military self-provisioning, complete with radical means of global circulation and evasion. This is the self-reliance of constantly mutating transnational shadow economies, changing diaspora dynamics and complex adaptive systems that security actors worry are capable of sustaining adversary cultures (McFate, 2004). There is a tension between internationally acceptable forms of adaptive self-reliance and, arising from the impossibility (and for many the undesirability) of this form of existence, what could be called actually existing development (Duffield, 2002)—that is, those forms of adaptation, legitimacy and survival that exist despite, and often in opposition to, official aid efforts. This tension marks the point where the liberal way of development shades into what Dillon and Reid (2009) have described as the liberal way of war. It marks a stage where actually existing development tips from being acceptable into an unacceptable way of life. When forms of radical autonomy and emergence are deemed to be a risk to the system as a whole—indeed, to global-life itself—then the liberal way of war itself threatens to go global, unrestrained and unlimited in discharging its new security responsibilities (Reid, 2009). Connecting Mass Consumer Societies and Fragile States Given the circulatory powers of actually existing development, the struggle over acceptable and unacceptable ways of life in the global south interconnects with the security of the global north. Once war becomes a struggle over ways of life, and life itself is characterized by powers of emergence and radical interconnectivity (Duffield, 2002), then the old dichotomy between the national and the international, a division that still structures academic life, collapses within political imagination (Blair, 2001). While a Fortress Europe remains an essential perimeter defence, the geopolitics of immigration control now appears inadequate on its own. Since the end of the Cold War, the welfare bureaucracies and critical infrastructures of mass consumer society, essential for a developed-life, have been reimagined as sources of systemic vulnerability. Non-intentional disasters like foot and mouth disease in pigs, Creutzfeldt–Jakob disease in cattle, failures in the electricity grid, losses of computerized personal data, the fragility of just-in-time fuel deliveries and now swine flu are constant reminders of the integrated nature of these infrastructures and their problematic resilience (Cabinet Office, 2008). Contemporary disasters are made intelligible through enacting the possibility of catastrophic system-failure in terms of damage to one strategic node having a radiating impact on others with which it is networked to produce a complex (cumulative and multileveled) disaster having society-wide effects. When one factors in radical global interconnectivity—for example, refugee surges from failed states, geopolitical threats to fuel supplies, health pandemics emerging from inadequate infrastructure or, not least, the intentionality of terrorism (de Goede, 2008)—then mass consumer societies begin to appear inherently vulnerable. Their integrated critical infrastructures, vital to maintaining a developed but dependent way of life, become so many complex disasters waiting to happen. While the geopolitics of border control provides an important means of spatial ordering, new sovereign frontiers and biopolitical campaigns have opened within mass consumer societies and the global borderlands. Having its origins in decolonization, a global security framework has emerged that now works across the collapsed national–international, or inside–outside, dichotomy (Bigo, 2001). Struggles against potential enemies internal to mass consumer society and operations waged against external networks or the ungoverned spaces of the global borderland are now part of the same strategic terrain (IPPR, 2008). The overt geopolitical violence of the initial phase of the ‘War on Terror’ (Graham, 2006) has now given way to an unending war that, rather than extermination, privileges the biopolitical management and regulation of life within its appropriate social habitat (Gregory, 2008). Reconnecting with the turn to conflict resolution already evident in aid policy during the 1990s, the initial neoconservative excesses in Iraq and Afghanistan have now vectored into counterinsurgency (Gonzalez, 2007). With catastrophic violence having done its familiar job of redrawing spheres of influence and reasserting racial hierarchies (Duffield, 2007: 191–197), it’s now business as usual as the liberal way of development moves back to the political foreground.

### ALT—Anti-Subordination Framing

#### We should frame the question of executive power in terms of racialized harm and otherization. Refusing accommodation with values of the security state is a *precondition* for preventing racialized hierarchy.

Gil GOTT Int’l Studies @ DePaul 5 “The Devil We Know: Racial Subordination and National Security Law” Villanova Law Review, Vol. 50, Iss. 4, p. 1075-1076

Anti-subordinationist principles require taking more complete account of how enemy groups are racialized, and how they come to be constructed as outsiders and the kinds of harms that may befall them as such. Group-based status harms include those that have been inscribed in law and effectuated through state action, and those that arise within civil society, through social structures, institutions, culture and habitus. Familiarity with the processes of racialization is a necessary precondition for appreciating and remedying such injuries. Applying anti-subordinationist thinking to national security law and policy does not require arguing that only race-based effects matter, but does require affording significant analytical and normative weight to the problems of such status harms. Racial injuries require racial remedies. Foregrounding anti-subordinationist principles in national security law and policy analysis departs significantly from traditional approaches in the field. Nonetheless, arguments based in history, political theory and pragmatism suggest that such a fundamental departure is warranted. Historically, emergency-induced "states of exception" 6 that have suspended legal protections against governmental abuses have tended to be identitybased in conception and implementation. 7 Viewed from the perspective of critical political theory, the constellation of current "security threats" rests on the epochal co-production of identity-based and market-driven global political antagonisms, referred to somewhat obliquely as civilization clashes or perhaps more forthrightly as American imperialism. Pragmatically, it makes no sense to fight terrorism by alienating millions of Muslim, Arab and South Asian residents in the United States and hundreds of millions more abroad through abusive treatment and double standards operative in identity-based repression at home and in selective, preemptive U.S. militarism abroad. Such double standards undermine the democratic legitimacy of the United States both in its internal affairs and in its assertions of global leadership. Indeed, there seems to be no shortage of perspectives from which liberal legal institutions would be enjoined from embracing a philosophy of political decisionism precisely at the interface of law and security, an anomic frontier along which are likely to arise identity-based regimes of exception and evolving race-based forms of subordination. Part I analyzes accommodationist approaches that variously incorporate security-inflected logic in truncating the regulative role law plays in national security contexts. I will seek to understand the accommodationist thrust of these interventions in light of the authors' operative assumptions regarding the proper array of interests and exigencies to be balanced. I will argue that the interests of demonized "enemy groups" facing racebased status harm-Muslims, Arabs and South Asians in the United States-are ineffectively engaged through accommodationist frameworks. The decisionist impulse of these analyses, that is, the tendency to acquiesce in the outcomes of non-substantively constrained statist and/or majoritarian political process, results from an incomplete grasp of the racialization processes. In short, more race consciousness is needed in national security law and policy in order to cement substantive commitments and procedural safeguards against historical and ongoing racebased subordination through the racialization of "security threats."

### AT: Perm (w/Multilat)

#### The multilateral vision of American leadership is no less Orientalist—they still divide the world between liberal democracies and illiberal peoples. Rejecting the aff’s justifications is a pre-requisite for genuine change.

Richard FALK Emeritus Int’l Law @ Princeton 9 [*Achieving Human Rights* p. 52-53]

The transition to a regulated structure of world order is underway and is assured unless a catastrophic breakdown occurs, due to ecological, economic, or political collapse. That is, the Westphalian form of world order, based on the state system, while resilient, is essentially being displaced from above and below. It is not only the case that the main struggle since 9/11 is being waged by a global state on the one side and a loosely linked headless network on the other side; the impact of multi-dimensional globalization is also making borders less important in most respects (although more important in some-for instance, restricting transnational migrants). And normative developments are now associated with international accountability for gross violations of human rights and for the commission of such crimes as genocide, torture, and ethnic cleansing. Much of the literature that recognizes this emergent global governance stresses the **inevitability** of **American leadership**. The **mainstream** debate is whether this leadership will take a **cooperative**, economic form as it did in the 1990s or move in direction of the unilateralist, coercive form of the early years of the twenty-first century.36 The outcome of the November 2004 American presidential elections, together with the impact of the purported transfer of sovereignty to Iraq on June 30, 2004, as well as the anti-war outcome of the 2006 congressional elections seemed to supply a short-term answer. The main argument being made seems likely to be unaffected by a change in the elected leadership of the United States, although the 2008 presidential elections might produce some **tactical adjustments** associated with the high costs of continuing the Iraq War. **Either** foreign policy **path** is **essentially Orientalist** in the sense of building a future world order on the basis of **American interests**, **an American worldview**, and an **American model** of constitutional democracy. Neither is sensitive, in the slightest, to the ordeal of the Palestinian people, and thus bitter resentments directed at the United States will be kept alive, especially in the Arab world. International law will continue to play a double role, facilitating the pretensions of the American model of "democracy" as an expression of a commitment to the realization of international human rights and offering opponents of this model legal standards and principles by which to validate their anti-imperial, antiAmerican resistance. In my view, only a **non-Orientalist reshaping** of global governance can be beneficial for the peoples of the world and **sustainable** over time. In that process, the **de-Orientalizing** of the **normative order** is of **paramount importance**, providing positive images of accountability, participation, and justice that do not universalize the mythic or existential realities of the American experience and that draw fully upon the creative energies and cultural worldviews of the diverse civilizations that together constitute the world. Such expectations may presently seem utopian , but that is only because our horizons are now clouded by **warmongering "realists"** and **global imperialists**. To **dream freely** of a benevolent future is the only way to encourage the **moral and political imagination** of people throughout the world to take responsibility for their own future, thereby repudiating in the most decisive way the deforming impacts of Orientalism in all of its sinister forms.

### 2NC K Prior

#### Legitimacy is a weapon for the national-security apparatus. Legal restrictions enable the U.S. to wage more precisely regulated and brutal forms of war.

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Kennedy begins by coldly contradicting those opponents of the Bush administration ‘that have routinely claimed that the United States has disregarded these rules’ (p. 40) by pointing out that both opponents and supporters of the Iraq war as well as both opponents and supporters of the great panoply of US legal measures related to the war on terror ‘were playing with the same deck’ (p. 40) in presenting ‘professional arguments about how recognised rules and standards, as well as recognised exceptions and jurisdictional limitations, should be interpreted’ (p. 40). The author’s only concession with reference to the Bush administration’s legal advisers is to point out that ‘as professionals, these lawyers failed to advise their client adequately about the consequences of the interpretations they proposed, and about the way others would read the same texts – and their memoranda’ (p. 39).Thus Kennedy does not adopt any legal position to the detriment of any other, as his assessment does not seemingly pretend to persuade his reader at the level of the world of legal validity presented in the vocabulary of the UN Charter. The extent to which that excludes the author from the category of being a ‘true jus-internationalist’, according to A. Canc¸ado Trindade’s understanding of those who actually ‘comply with the ineluctable duty to stand against the apology of the use of force which is manifested in our days through distinct “doctrinal” elaborations’,42 is not for us to judge. Suffice it to note that the starting point of Kennedy’s convoluted perspective on the matter is that ‘the law of force’ is a form of ‘vocabulary for assessing the legitimacy’ (p. 41) of a form of conduct (e.g. amilitary campaign) or ‘for defending as well as attacking the “legality”’ (p. 41) of an act (e.g. distinguishing legitimate from illegitimate targets) in which the same law of force becomes a two-edged sword, everybody’s and no one’s strategic partner in a contemporary world where ‘legitimacy has become the currency of power’ (p. 45). For the author, in today’s age of ‘lawfare’ (p. 12), ‘to resist war in the name of law . . . is to misunderstand the delicate partnership of war and law’ (p. 167). In Kennedy’s view, therefore, ‘there is little comfort in knowing that law has become the vernacular for evaluating the legitimacy of war and politics where it has done so by itself becoming a strategic instrument of war and the continuation of politics by similar means’ (p. 132). 3. LAW AS A MODERN LEGAL INSTITUTION Of War and Law seems, indeed, to be animated by a certain philosophical perplexity regarding the ambiguous relation between the apparently antithetical nature of the terms appearing in its title. Since antiquity both jurists and philosophers have taught that the law’s raison d’eˆ tre is that of making social peace possible, of overcoming what would later be commonly known as the Hobbesian state of nature: bellum omnium contra omnes. Kant noted that law should be perceived first and foremost as a pacifying tool – in other words, ‘the establishment of peace constitutes, not a part of, but the whole purpose of the doctrine of law’43 – and Lauterpacht projected that same principle onto the international sphere: ‘the primordial duty’ of international law is to ensure that ‘there shall be no violence among states’.44 The paradox lies, of course, in that law performs its pacifying function not by means of edifying advice, but by the threat of the use of force. In this sense, as Kennedy points out, ‘to use law is also to invoke violence, at least the violence that stands behind legal authority’ (p. 22). Hobbes himself never concealed the fact that the state, ‘that mortal god, to which we owe under the immortal God our peace and defence’,would succeed in eradicating inter-individual violence precisely due to its ability to ‘inspire terror’;45 but Weber – ‘the State is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory’46 – Godwin,47 and Kelsen48 have also provided support for the same proposition. This ambivalent and paradoxical relationship between law and violence,which is obvious in the domestic or intra-state realm, becomes even more obvious in the interstate domain with its classical twin antinomy of ubi jus, ibi pax and inter arma leges silent until the law in war emerges as a bold normative sector which dares to defy this conceptual incompatibility; even war can be regulated, be submitted to conditions and limitations. The hesitations of Kant in addressing jus in bello49 or the very fact that the Latin terms jus ad bellum and jus in bello were coined, as R. Kolb has pointed out,50 at relatively recent dates, seem to confirm that this has never been per se an evident aspiration.51 Kennedy explains his own calling as international lawyer as being partly inspired by his will to participate in the law’s civilizing mission (p. 29)52 as something utterly distinct from war: We think of these rules [law in war] as coming from ‘outside’ war, limiting and restricting the military. We think of international law as a broadly humanist and civilizing force, standing back from war, judging it as just or unjust, while offering itself as a code of conduct to limit violence on the battlefield. (p. 167) The author notes how this virginal confidence in the pacifying efficiency of international law – its presumed ability to forbid, limit, humanize war ‘from outside’ – becomes progressively nuanced, eroded, almost discredited by a series of considerations. The disquieting image of the ‘delicate partnership of war and law’ becomes more and more evidenced; the lawyer who attempts to regulate warfare inevitably also becomes its accomplice. As Kennedy puts it, The laws of force provide the vocabulary not only for restraining the violence and incidence of war – but also for waging war and deciding to go to war. . . . [L]aw no longer stands outside violence, silent or prohibitive. Law also permits injury, as it privileges, channels, structures, legitimates, and facilitates acts of war. (p. 167) Unable to suppress all violence, law typifies certain forms of violence as legally admissible, thus ‘privileging’ them with regard to others and investing some agents with a ‘privilege to kill’ (p. 115). Law thereby becomes, in Kennedy’s view, a tool not so much for the restriction of war as for the legal construction of war.53 Elsewhere we have labeled Kennedy ‘a relative outsider’54 who, peering from the edge of the vocabulary of international law, tries to ‘highlight its inherent structural limits, gaps, dogmas, blind spots and biases’, as someone ‘specialised in speaking the unspeakable, disclosing ambivalences and asking awkward questions’.55 The ‘unspeakable’, in the case of the ‘law of force’, is precisely, in Kennedy’s view, this process of involuntary complicity with the very phenomenon one supposedly wants to prohibit. Prepared to ‘stain his hands’ a` la Sartre, in his attempt to humanize the military machine from within, to walk one step behind the soldier reminding him constantly, as an imaginary CNN camera, of the legal limits of the legitimate use of force, the lawyer starts to realize, in the author’s view, that he is becoming but an accessory to the war machine. Kennedy maintains that law, in its attempt to subject war to its rule, has been absorbed by it and has now become but another war instrument (p. 32);56 law has been weaponized (p. 37).57 Contemporary war is by definition a legally organized war: ‘no ship moves, no weapon is fired, no target selected without some review for compliance with regulation – not because the military has gone soft, but because there is simply no other way to make modern warfare work. Warfare has become rule and regulation’ (p. 33).War ‘has become a modern legal institution’ (p. 5), with the result that the international lawyer finds himself before an evident instance of Marxian reification, in other words ‘the consolidation of our own products as a material power erected above us beyond our control that raises a wall in front of our expectations and destroys our calculations’.58 Ideas and institutions develop ‘a life of their own’, an autonomous, perverted dynamism.

## \*\*\* 1NR

### AT: Case Outweighs (Hegemony)

#### We should try to see the consequences of hegemony from the outside in—incredible destruction, further instability, and tyranny. Their impacts are constructed by our refusal to see beyond insular American IR.

Von Eschen 5—Penny Von Eschen, History @ Michigan [“Enduring Public Diplomacy,” *American Quarterly* 57.2 MUSE]

An account of U.S. public diplomacy and empire in Iraq can be constructed only through engaging fields outside the sphere of American studies. Political scientist Mahmood Mamdani locates the roots of the current global crisis in [End Page 339] U.S. cold war policies. Focusing on the proxy wars of the later cold war that led to CIA support of Osama Bin Laden and drew Iraq and Saddam Hussein into the U.S. orbit as allies against the Iranians, Mamdani also reminds us of disrupted democratic projects and of the arming and destabilization of Africa and the Middle East by the superpowers, reaching back to the 1953 CIA-backed coup ousting Mussadeq in Iran and the tyrannical rule of Idi Amin in Uganda. For Mamdani, the roots of contemporary terrorism must be located in politics, not the "culture" of Islam. Along with the work of Tariq Ali and Rashid Khalidi, Mamdani's account of the post–1945 world takes us through those places where U.S. policy has supported and armed military dictatorships, as in Pakistan and Iraq, or intervened clandestinely, from Iraq and throughout the Middle East to Afghanistan and the Congo. For these scholars, these events belong at the center of twentieth-century history, rather than on the periphery, with interventions and coups portrayed as unfortunate anomalies. These scholars provide a critical history for what otherwise is posed as an "Islamic threat," placing the current prominence of Pakistan in the context of its longtime support from the United States as a countervailing force against India.8

Stretching across multiple regions, but just as crucial for reading U.S. military practices in Iraq, Yoko Fukumura and Martha Matsuoka's "Redefining Security: Okinawa Women's Resistance to U.S. Militarism" reveals the human and environmental destruction wrought by U.S. military bases in Asia through the living archive of activists who are demanding redress of the toxic contamination and violence against women endemic to base communities.9 Attention to the development of exploitative and violent sex industries allows us to place such recent horrors as the abuse, torture, and debasement at Abu Ghraib prison in Iraq in a history of military practices.10 Taken together, these works are exemplary, inviting us to revisit the imposition of U.S. power in East and South Asia, the Middle East, and Africa, regions where the instrumental role of U.S. power in the creation of undemocratic military regimes has often been overlooked. That none of these works has been produced by scholars who were trained in American studies is perhaps not accidental, but rather symptomatic of a field still shaped by insularity despite increasing and trenchant critiques of this insularity by such American studies scholars as Amy Kaplan and John Carlos Rowe.11 In recommending that American studies scholars collaborate with those in other fields and areas of study and by articulating warnings about how easily attempts to "internationalize" can hurtle down the slippery slope of neoliberal expansion, Kennedy and Lucas join such scholars in furthering the project of viewing U.S. hegemony from the outside in. They [End Page 340] expose the insularity that has been an abiding feature of U.S. politics and public discourse.

### Democratic Peace K—Turns Case

#### Stability offered by liberal-democratic assistance comes at a price—they establish the conditions for long-term exploitation and genocide. The historical record of democratic interventions proves the reality of solvency never lives up to the rhetoric

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Backsliding: Emerging problems with the liberal peace The liberal peace offers a blueprint and process for stabilizing postconflict societies. Yet it has shown a marked propensity for backsliding. In cases including Cambodia, the Middle East, Sri Lanka, Lebanon, Kosovo, Bosnia and Timor-Leste, direct or indirect attempts have been made through donor conditionality, arrangements with the World Bank, or diplomatic and strategic relations to instil democratization, pluralism, the rule of law, human rights and neo-liberal forms of marketization. Broad agreement on these terms is normally apparent amongst peacebuilders, which I have previously described as a weak "peace building consensus" about the liberal peace,26 and local actors often nominally join this consensus. Yet, in comparative work in a number of cases, research indicates that, despite the construction of liberal conditionality and institutions, little changes in the discursive political frameworks in post-conflict settings. Nationalists in Bosnia still threaten the unity ofpost-Dayton Bosnia and few reforms have been internalized. In Kosovo, ethnic violence is a regular occurrence and ethnic difference looks set to be the basis for the state that will emerge from the recent declaration of independence. In Timor-Leste, political and socioeconomic problems led to the complete collapse of the liberal state in 2006, four years after the United Nations withdrew and independence was achieved. Recent moves in Timor-Leste have seen welfare and cultural issues placed at the forefront of political debate (and a concurrent stabilization). 2 7 The liberal international " bubble" in Afghanistan barely covers all of Kabul. In many of these cases, a "draw-down" is currently taking place, but there is little indication that what has been achieved is self-sustainable.28 Kant was clear that his perpetual peace system would not advance progressively, but would be subject to attacks, obstacles and problems, both internally and externally. It is also important to note that Kant believed that his system needed to be able to conduct peaceful relations with nonliberal others and should not be used as an excuse for hegemonic practices or wars with such others. It should not become a basis for new and exclusionary practices, as Macmillan argues, against non-liberal others. 29 Any hope of developing a broader peace in these terms therefore requires a broader engagement than is often projected by theorists of the democratic peace—in other words, more liberalism, not a reversion to illiberalism in the hope it will avert any "backsliding". Thus, Kantian approaches to peace required a focus not just on democracy and trade but also on the broader root causes of conflict, including welfare and culture. 30 In this way, Kant was not merely a pillar of his establishment but actually sought to unsettle the comfortable assumptions that his own thinking might lead to, though he also extended Rousseau's thinking on peace by favouring democracy.31 So, extending this line of thought, backsliding for Kant was more than just a structural obstacle; it was also representative of the failure of the putative " liberal" polity to encounter the other in a reflexive and pluralist manner, without reverting to coercive and conditional hegemonic engagement. Kant would not have wanted to see the democratic peace argument, for example, become a reason for colonialism or imperialism redux, as J ahn has shown.32 Backsliding is as much about post-conflict polities failing to achieve and maintain liberal standards as it is about a peace building consensus being imposed with little regard for the "local" and indigenous and, of course, with simplistic assumptions about the universality and transferability of technical and contextual solutions for peace. It also points to the need for a move beyond liberalism. Institutional responses to the problems of liberal peacebuilding often focus on coordination and efficiency in peace building operations, rather than on the deeper issues that have also appeared. These are as follows. As Mann and Snyder have argued, democratization can lead to ethnic polarization and even genocidal violence. 33 Certainly, such polarization has occurred in Bosnia and Kosovo. Liberal human rights can be culturally inappropriate or contested, as can be seen in cultural settings where communities, tribes or clans, rather than individuals, are the unit of analysis, as in much of sub-Saharan Africa, the Pacific or Asia. 34 The rule of law can mask inequity and the privatization of state functions at the expense of the needy, as appears to be the case across all peacebuilding interventions, where subsistence and unemployment rates rarely improve. 35 Civil society building is often subject to "forum shopping" and an instrumentalist project mentality rather than looking at localized needs. Development, in its neo-liberal or modernization forms, can marginalize the needy.36 Indeed, because liberal peace building is more or less always imagined within a liberal and neo-liberal state framework, it can become an agent of ethnocentric self-determination, nationalism and a "bare" socioeconomic life because such states cannot compete internationally in an open market and do not have the resources to establish an economic base. This emergence of bare life for citizens means that the aspired-to liberal social contract between government and citizen is not achieved, and, indeed, citizens may choose to move into grey or black markets, militias or transnational crime. 37 These unintended dynamics are major sources of backsliding and can be observed across a range of peace operations since the end of the Cold War. Do these criticisms mean that the liberal peace is a failed project, or is it merely suffering from stress and can be salvaged? The editors of this volume disagree significantly on this point. Quite clearly it is a top-down project, promoted by an alliance of liberal, hegemonic actors. The peacebuilding consensus behind it is broad, but the liberal peace project is under considerable strain because it does not deliver all that it promises in conflict zones. What is more, it is onto logically incoherent, which is reflected in its coordination. It offers several different states of being—for a state-centric world dominated by sovereign constitutional democracies, a world dominated by institutions, a world in which human rights and selfdetermination are valued. The only way in which this peace system can be coherent is if it is taken to be hierarchical and regulative, which then provides the framework in which human rights and self-determination can be observed. Democracy provides the political system in which this process is made nationally representative. The trouble with this is that the individual is subservient to the structure and system, which may be enabling in some contexts but not in others. Where enforcement and surveillance are weak, abuses generally follow and are committed by the elites who control the various systems that make up the liberal peace. This means that the post-conflict individual, who is relatively powerless, is required to perform "liberal peace acts", such as voting, paying taxes, engaging in the free market and expecting rights, in order to keep the international gaze satisfied, but is not to expect that this performance carries any weight. The liberal peace is easily rendered virtual or hyperreal; the copy does not represent the actual intention of the international community. Thus the liberal peace becomes a virtual peace; more strongly associated with conservative forms of liberalism and underpinned by realist theory. In this sense the liberal peace produced by realist and idealist thinking, and even in the contexts of constructivism and critical theory, is virtual and is constructed primarily for the benefit of the international community, in the hope that locals will benefit later when it becomes internalized and the local is 'converted'. Post-structuralist contributions to international relations theory, which turn this process on its head and argue for the recognition, contextualization, emancipation and de-securitization of the individual, fail to offer a way out of this impasse. Indeed, the mainstream debates have even managed to co-opt aspects of the post-structural agenda—in particular the requirements for emancipation, empathy and care (but not the recognition of alterity)—into the mainstream consensus, producing an emancipatory form of liberalism, at least in rhetorical terms. The international and academic consensus on the liberal peace across the board has been achieved on the assumption that its norms and governance frameworks are universal. But this conclusion has been reached only on the basis of a limited consultation, mainly among the victors of the Second World War. Unfortunately, as is well known, this conversation has reinforced and favoured the hegemony of official actors, key states and their organizations, and has resulted in the relative marginalization of non-state actors, developing states, postcolonial states, individuals, communities and other identity groupings. This can also be described as a form of orientalism, in which liberal epistemic communities of peacebuilders transfer governance regimes through a process of conditional funding, training and dependency creation to more " primitive" recipients in conflict zones. This process is supported by the ideological hegemony of contemporary forms of liberalism, which are projected through the various mediums of print capitalism as unassailable. They aim to make recipients internalize the liberal peace while contradictorily gaining agency and autonomy. There are a number of reasons why this has not worked. First, despite the fact that the Cold War is over, there is a varying resistance to the different ideological aspects and basic assumptions of this liberal peace. Though most accept that democratization should be a cornerstone of political organization, parts of the Middle East, South Asia and subSaharan Africa are led by governments that do not aspire to democracy. This is not to say that the populations of these regions do not aspire to democratic self-determination, but democratic aspirations are very often closely linked with secessionist aspirations and state creation where identity minorities desire separation in order to avoid minority status. Democratization has been shown regularly to result in only a softening of feudal or corrupt politics rather than radical reform. Many across the world aspire to free markets and unfettered trade, but the vast majority of the populations affected by war and conflict are economically disadvantaged because of both war and free trade. Many more see the international political economy as redistributing resources in favour of the elites that drive the neo-liberal character of the liberal peace, meaning that neo-liberal economic policies generally disadvantage the already marginalized. Many resist the neo-liberal development strategies that accompany the liberal peace. Some resist the universal claims of the human rights rhetoric. Many traditional elites have adopted what van der Walle has called the " partial reform syndrome",38 in which local elites use the institutions and dynamics of the liberal peace to their own advantage by literally freeriding on the resources that it provides and by only partially implementing its demands. In this sense, the liberal peace agenda is driven by a neo-liberal notion of power—money and resources can be used to induce institutional development and reform in conflict zones. Local elites often use this to camouflage the lack of reform. Much of the critical focus on this liberal version of peace, however, is on how it concentrates on institutions, officialdom and top-down reform, and thus results in the creation of "empty states" in which citizens are generally not seen or heard. In fact, there has been a major attempt to engage with this problem in order to identify and empower isolated and marginalized groups in post-conflict zones, and indeed to provide every citizen with rights and agency as befits their status in the liberal peace. Yet, inevitably, this has been a troubled process, far outweighed by the more traditional assumption that, if one builds institutions first, then every other aspect of the liberal peace will automatically fall into place. This, of course, means that most energy is expended on the top-down model of the liberal peace. Some, such as Ignatieff, have called this a "rough and ready peace";39 others, such as Fukuyama, have argued that this in effect results in the destruction of what little local or indigenous capacity was already in existence.4o In other words, the liberal peace agenda is far from uncontested, coherent or proven in practice. It is marked by local co-option, backsliding and international unease.

### AT: Overturn Liberal Order

#### Rising powers will preserve the liberal order—US isn’t key

Ikenberry 11—PhD, Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs [May/June issue of Foreign Affairs, G. John, “The Future of the Liberal World Order,” http://www.foreignaffairs.com/articles/67730/g-john-ikenberry/the-future-of-the-liberal-world-order?page=show]

For all these reasons, many observers have concluded that world politics is experiencing not just a changing of the guard but also a transition in the ideas and principles that underlie the global order. The journalist Gideon Rachman, for example, says that a cluster of liberal internationalist ideas -- such as faith in democratization, confidence in free markets, and the acceptability of U.S. military power -- are all being called into question. According to this worldview, the future of international order will be shaped above all by China, which will use its growing power and wealth to push world politics in an illiberal direction. Pointing out that China and other non-Western states have weathered the recent financial crisis better than their Western counterparts, pessimists argue that an authoritarian capitalist alternative to Western neoliberal ideas has already emerged. According to the scholar Stefan Halper, emerging-market states "are learning to combine market economics with traditional autocratic or semiautocratic politics in a process that signals an intellectual rejection of the Western economic model." Today's international order is not really American or Western--even if it initially appeared that way. But this panicked narrative misses a deeper reality: although the United States' position in the global system is changing, the liberal international order is alive and well. The struggle over international order today is not about fundamental principles. China and other emerging great powers do not want to contest the basic rules and principles of the liberal international order; they wish to gain more authority and leadership within it. Indeed, today's power transition represents not the defeat of the liberal order but its ultimate ascendance. Brazil, China, and India have all become more prosperous and capable by operating inside the existing international order -- benefiting from its rules, practices, and institutions, including the World Trade Organization (WTO) and the newly organized G-20. Their economic success and growing influence are tied to the liberal internationalist organization of world politics, and they have deep interests in preserving that system. In the meantime, alternatives to an open and rule-based order have yet to crystallize. Even though the last decade has brought remarkable upheavals in the global system -- the emergence of new powers, bitter disputes among Western allies over the United States' unipolar ambitions, and a global financial crisis and recession -- the liberal international order has no competitors. On the contrary, the rise of non-Western powers and the growth of economic and security interdependence are creating new constituencies for it. To be sure, as wealth and power become less concentrated in the United States' hands, the country will be less able to shape world politics. But the underlying foundations of the liberal international order will survive and thrive. Indeed, now may be the best time for the United States and its democratic partners to update the liberal order for a new era, ensuring that it continues to provide the benefits of security and prosperity that it has provided since the middle of the twentieth century.

### Demo

#### U.S. Court decisions are not modeled.

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

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

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

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

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

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

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

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

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

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

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

#### Shared interests solve

Weitz ‘11 (Richard, Director, Center for Political-Military Analysis Senior Fellow Hudson Institute, PhD in pol sci from Harvard, China-Russia relations and the United States: At a turning point?, <http://en.rian.ru/valdai_op/20110414/163523421.html>, 2011)

Since the end of the Cold War, the improved political and economic relationship between Beijing and Moscow has affected a range of international security issues. China and Russia have expanded their bilateral economic and security cooperation. In addition, they have pursued distinct, yet parallel, policies regarding many global and regional issues. Yet, Chinese and Russian approaches to a range of significant subjects are still largely uncoordinated and at times in conflict. Economic exchanges between China and Russia remain minimal compared to those found between most friendly countries, let alone allies. Although stronger Chinese-Russian ties could present greater challenges to other countries (e.g., the establishment of a Moscow-Beijing condominium over Central Asia), several factors make it unlikely that the two countries will form such a bloc. The relationship between the Chinese and Russian governments is perhaps the best it has ever been. The leaders of both countries engage in numerous high-level exchanges, make many mutually supportive statements, and manifest other displays of Russian-Chinese cooperation in what both governments refer to as their developing strategic partnership. The current benign situation is due less to common values and shared interests than to the fact that Chinese and Russian security concerns are predominately directed elsewhere. Although both countries have experienced a geopolitical resurgence during the past two decades, Chinese and Russian security concerns are not directed at each other but rather focus on different areas and issues, with the notable exceptions of maintaining stability in Central Asia and constraining North Korea’s nuclear activities. Most Chinese policy makers worry about the rise of separatist movements and Islamist terrorism in western China and about a potential military clash with the United States in the Asia-Pacific region, especially regarding Taiwan and the contested maritime regions of the South China and East China Seas. In contrast, most Russian analysts see terrorism in the North Caucasus, maintaining influence in Europe, and managing security relations with Washington as the main security challenges to their country. Neither Chinese nor Russian military experts perceive a near-term military threat from the other’s country. The Russian government has even provided sophisticated navy, air, and air defense platforms to the Chinese military, confident that the People’s Liberation Army (PLA) would only employ these systems, if at all, against other countries. In addition, China and Russia have resolved their longstanding border disputes as well as contained their rivalries in Central Asia, the Korean Peninsula, and other regions. Since the Soviet Union’s disintegration in the early 1990s, China and Russia have resolved important sources of their Cold War-era tensions. Through protracted negotiations, the two governments have largely solved their boundary disputes, which had erupted in armed border clashes in the late 1960s and early 1970s. The stoking of anti-Chinese sentiment by politicians in the Russian Far East impeded the ability of Russia’s first President, Boris Yeltsin, to make substantial progress during the 1990s in demarcating the Russia-China border. These politicians sought to rally local support by accusing Moscow of planning to surrender territory to Beijing. By the mid-2000s, Yeltsin’s successor, Vladimir Putin, managed to centralize sufficient political power in the Kremlin to ignore these local sentiments. Furthermore, Russia and China have demilitarized their lengthy shared frontier through a series of arms control and disarmament measures. Chinese and Russian leaders share a commitment to a philosophy of state sovereignty (non-interference) and territorial integrity (against separatism). Although Russian and Chinese leaders defend national sovereignty by appealing to international law, their opposition also reflects more pragmatic considerations---a shared desire to shield their human rights and civil liberties practices, and those of their allies, from Western criticism. Chinese and Russian officials refuse to criticize each other’s foreign and domestic policies in public. They also have issued many joint statements calling for a multi-polar world in which no one country (e.g., the United States) dominates. During the past few years, their leaders have commonly blamed American economic mismanagement for precipitating the global recession. They regularly advocate traditional interpretations of national sovereignty that exempt a government’s internal policies from foreign criticism. Beijing and Moscow oppose American democracy promotion efforts, U.S. missile defense programs, and Washington’s alleged plans to militarize outer space. The two countries strive to uphold the authority of the United Nations, where the Chinese and Russian delegations frequently collaborate to dilute resolutions seeking to impose sanctions on Burma, Iran, Zimbabwe, and other governments they consider friendly. In July 2008, they finally demarcated the last pieces of their 4,300-km (2,700 mile) frontier, one of the world’s longest land borders, ending a decades-long dispute. Chinese and Russian officials have expressed concern about the efforts by the United States and its allies to strengthen their ballistic missile defense (BMD) capabilities. Their professed fear is that these strategic defense systems, in combination with the strong American offensive nuclear capabilities, might enable the United States to obtain nuclear superiority over China and Russia. Both governments have also expressed unease regarding U.S. military programs in the realm of outer space. Russian and Chinese experts claim that the United States is seeking to acquire the means to orchestrate attacks in space against Russian and Chinese reconnaissance satellites and long-range ballistic missiles, whose trajectories passes through the upper atmosphere. In response, the Russian and Chinese governments have proposed various arms control initiatives purportedly aimed at preventing the militarization of space. For example, the Russian and Chinese representatives have unsuccessfully sought for years at the UN Conference on Disarmament to negotiate a treaty on the “Prevention of an Arms Race in Outer Space,” which would seek to prohibit the militarization of outer space. More recently, China and Russia have submitted a joint Space Treaty to the Conference on Disarmament in Geneva, which would impose legal constraints on how the United States could use outer space. They have sought to link progress on other international arms control initiatives to the adoption of these space limitations. The bilateral defense relationship has evolved in recent years to become more institutionalized and better integrated. As befits two large and powerful neighbors, the senior military leaders of Russia and China now meet frequently in various formats. Their direct encounters include annual meetings of their defense ministers and their armed forces chiefs of staff. Since 1997, they have also organized yearly “strategic consultations” between their deputy chiefs of the general staff. In March 2008, the Chinese defense minister established a direct telephone line with his Russian counterpart, the first suchministerial hotline ever created by China and another country. In December 2008, the chiefs of the Chinese and Russian general staffs created their own direct link. Senior Russian and Chinese defense officials also typically participate in the regular heads of government meetings between Russia and China, which occur about once a year as bilateral summits. They also confer frequently at sessions of multinational gatherings, such as at meetings of the SCO, which host regular sessions for defense ministers. Contacts are even more common among mid-level military officers, especially those in charge of border security units and military units in neighboring Chinese and Russian territories. Russian and Chinese military experts also engage in regular direct discussions related to their functional expertise such as communications, engineering, and mapping. Substantial academic exchanges also regularly occur. More than 1,000 Chinese students have studied at over 20 Russian military academies since 1996. The two defense communities conduct a number of larger exchanges and engagements. The best known are the major biennial military exercises that they have been holding since 2005, but smaller-scale engagements also frequently occur. Chinese and Russian leaders also have developed shared perspectives and independent offensive capabilities regarding governmental activities in the cyber domain. The two governments have been developing their information warfare capabilities and now possess an extensive variety of offensive and defensive tools in this domain. Furthermore, recent revelations regarding Chinese cyber-espionage activities suggest the extent to which Chinese operatives have penetrated Western information networks. In Russia’s case, cyber attacks against Estonia, Georgia, and other countries illustrate the extensive offensive capabilities available to that country’s forces. Russia’s hybrid August 2008 campaign against Georgia was particularly effective in disabling Georgia’s infrastructure as well as demonstrating a potential capacity to inflict widespread physical damage. Both countries appear to have already conducted extensive surveying of U.S. digital vulnerabilities and to have prepared targeted campaign plans to exploit U.S. network vulnerabilities if necessary. Although these offensive and defensive preparations are being conducted independently, the Chinese and Russian governments are collaborating, along with other Eurasian allies in the SCO, to deny Internet resources to civil liberties groups and other opponents of their regimes. Central Asia perhaps represents the geographic region where the security interests of China and Russia most overlap. Although China and Russia often compete for Central Asian energy supplies and commercial opportunities, the two governments share a desire to limit potential instability in the region. They especially fear ethnic separatism in their border territories supported by Islamic fundamentalist movements in Central Asia. Russian authorities dread the prospect of continued instability in the northern Caucasus, especially Chechnya and neighboring Dagestan. China’s leaders worry about separatist agitation in the Xinjiang Uighur Autonomous Region. The shared regional security interests between Beijing and Moscow have meant that the newly independent states of Central Asia---Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan---have become a generally unifying element in Chinese-Russian relations. Their overlapping security interests in Central Asia have manifested themselves most visibly in the Shanghai Cooperation Organization (SCO).

#### No Russian War

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Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely remain limited and compartmentalized. Russia and the West do not have fundamentally conflicting vital interests of the kind countries would go to war over. And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.