# 1nc

## 1

Plan destroys war powers

Kriner ‘9

Douglas, Assistant Professor of Political Science, Boston University, “CAN ENHANCED OVERSIGHT REPAIR “THE BROKEN BRANCH”?,” <http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume89n2/documents/KRINER.pdf>

The presumption is widespread that through rigorous oversight of the executive branch Congress can maintain a degree of influence over policymaking, **even in an era of expanded presidential powers** and broad delegations of authority to the executive branch. Immediately after the Democratic takeover of both houses of Congress in 2006, California Congressman Henry Waxman argued that investigations may be "just as important, if not more important, than legislation." n75 Similarly, in academic circles Thomas Mann spoke for many when he argued that the rise of oversight in the 110th Congress "has been the most important change since the 2006 election in terms of relations between the Congress and the administration." n76 However, the precise mechanisms through which oversight alone can influence executive behavior and the course of policymaking are frequently ignored. Recommendations by oversight committees are nonbinding and have no force of law. Congress does have budgetary control over executive departments and agencies, an important means of leverage. However, as noted [\*785] by skeptics of congressional dominance theories in the literature on bureaucratic control, budgetary tools are somewhat clumsy instruments for encouraging greater executive compliance with legislative intent. n77 Moreover, oversight committees themselves normally lack appropriations authority, which diminishes the credibility of any threatened committee sanctions for noncompliance. n78 Indeed, in most situations an oversight committee's only formal recourse is to propose new legislation that would legally compel a change in course. However, such efforts are subject to the collective action dilemma and intricate procedures riddled with transaction costs and super-majoritarian requirements, not to mention a presidential veto. n79 If oversight can only constrain executive branch activities through such formal mechanisms, then there are strong reasons to question whether it can truly serve as a real constraint on the executive's freedom of action. And if it does not, then oversight is merely inconsequential position-taking, not a tool for continued congressional influence over policymaking when legislative options fail. However, there are **strong theoretical** reasons and growing **empirical evidence** to suggest that congressional oversight can influence executive branch behavior through more informal means. Vigorous congressional oversight can **inform** policy discourse, **influence** public opinion **and bring** popular pressure to bear on the executive to change course. In David Mayhew's words, members of Congress can wield considerable influence not only by legislating, but also by "making moves" in what he terms the "public sphere." n80 Surveying over 200 years of congressional history, Mayhew identified more than 2300 "actions" members of Congress have taken in the public sphere in an attempt to shape the national policy discourse and mobilize popular opinion. n81 Again and again, oversight and investigative committee hearings have served as a critically important forum in which members of Congress take stands, stake out positions in contrast to those of the executive branch, and battle for influence over the attentive public. As a result, Mayhew argues that "the politics involving members of Congress needs to be modeled not just as opinion expression - the custom in political science analysis - but also as opinion formation." n82 [\*786] But can congressional oversight really influence public opinion? After all, the vast majority of Americans rarely tune to C-SPAN to catch the latest proceedings from hearing rooms in the Russell or Cannon congressional buildings. However, Congress may have an important ally in the mass media, which aids them in their quest to reach a broader audience. A large literature within political communications suggests that the media "indexes" the scope and tone of its coverage to the political debate in Washington, particularly in Congress. n83 Moreover, many congressional hearings are **made-for-television events** and are consciously designed to generate conflict. Conflict, according to many journalistic norms, is inherently newsworthy, and thus the press may play an important role in amplifying the congressional challenge to administration policies and actions and in broadening the audience such congressional cues reach. n84 A number of recent studies have found strong empirical evidence that the positions articulated in Congress may indeed have a considerable influence on public opinion, particularly in questions of military policy. n85 Many studies rely on observational data. n86 Matthew Baum and Tim Groeling's research demonstrates strong correlations between media-reported congressional rhetoric surrounding multiple major military missions in the last quarter century and popular support for those endeavors. n87 However, such studies relying exclusively on observational data usually only demonstrate correlations between congressional actions and public opinion. If this relationship is endogenous - that is, if members of Congress respond to public opinion when crafting their rhetoric and actions even as they seek to lead it - then raw correlations between the two tell us little about the direction of the causal [\*787] arrow. n88 Is Congress leading public opinion, or are shifts in public opinion producing changes in congressional positions?

Spills-over to collapse prez powers

Klukowski 11 (Kenneth, Research Fellow, Liberty University School of Law; Fellow and Senior Legal Analyst, American Civil Rights Union; National-Bestselling Author. George Mason University School of Law, J.D. 2008; University of Notre Dame, B.B.A. 1998, “MAKING EXECUTIVE PRIVILEGE WORK: A MULTI-FACTOR TEST IN AN AGE OF CZARS AND CONGRESSIONAL OVERSIGHT” 2011, 59 Clev. St. L. Rev. 31)

VI. CONCLUSION

Most controversies between Congress and the White House over information are decided more by politics than by law, and so a settlement is usually reached favoring the party with the public wind to its back. n348 **Questions of law should not be decided in that fashion**. Therefore, the reach and scope of executive privilege should be settled by the courts in such situations, so that the President's power is not impaired whenever the political wind is in the President's face and at his opponents' backs, or the President is inappropriately shielded when political tides flow in his favor.

While the best outcome in any interbranch dispute is the political branches reaching a settlement, "such compromise may not always be available, or even desirable." n349 It is not desirable where it sets a precedent **that** degrades **one of the three branches of government. If one branch of government demands something to which it is not constitutionally entitled and that the Constitution has fully vested in a coequal branch, the vested branch should not be required to negotiate on the question**. Negotiation usually involves compromise. This negotiation would often result in one branch needing to cede to the other**,** encouraging additional unconstitutional demands in the future. Though this may perhaps be a quicker route to a resolution, it disrupts the constitutional balance in government. As the Supreme Court has recently explained, "'convenience and efficiency are not the primary objectives--or the hallmarks--of democratic government.'" n350

President Reagan declared that "you aren't President; you are temporarily custodian of an institution, the Presidency. And you don't have any right to do away with any of the prerogatives of that institution, and one of those is executive privilege. And **this is what was being attacked** by the Congress." n351 Thus, any White House has the obligation to fight to protect executive privilege, and the courts should draw the line to preserve that constitutional prerogative. Likewise, there are times when it is the President who is refusing to give Congress its due under the Constitution, where Congress must assert its prerogatives for future generations. Conversely, where confidentiality is not warranted, courts must ensure public disclosure and accountability.

Extinction

Paul 98 (Joel, Professor, University of Connecticut School of Law, “The Geopolitical Constitution: Executive Expediency and Executive Agreements” July, 1998, 86 Calif. L. Rev. 671) \*\*Footnote 137-139 added

Whatever the complexity of causes that led to the Cold War - ideology, economics, power politics, Stalin's personality, Soviet intrigue, or American ineptitude - the tension of the bipolar order seemed real, immutable, and threatening to the U.S. public. n135 The broad consensus of U.S. leadership held that **the immediacy of the nuclear threat**, the need for covert operations and intelligence gathering, and the complexity of U.S. relations with both democracies and dictatorships **made it impractical to engage in congressional debate and oversight of foreign policy-making**. n136 The eighteenth-century Constitution did not permit a rapid response to twentieth-century foreign aggression. The reality of transcontinental ballistic missiles collapsed the real time for decision-making to a matter of minutes. **Faced with the apparent choice between the** risk of nuclear annihilation **or amending the constitutional process for policy-making, the preference for a powerful executive was clear**. n137 Early in the Cold War one skeptic of executive power, C.C. Rossiter, acknowledged that the steady increase in executive power is unquestionably a cause for worry, but so, too, is the steady increase in the magnitude and complexity of the problems the president has been called upon by the American people to solve in their behalf. They still have more to fear from the ravages of depression, rebellion, and especially atomic war than they do from whatever decisive actions may issue from the White House in an attempt to put any such future crises to rout....It is not too much to say that **the destiny of this nation in the Atomic Age will rest in the** [\*700] **capacity of the Presidency** as an institution of constitutional dictatorship. n138 n137. President Truman warned that we live in an age when hostilities begin without polite exchanges of diplomatic notes. There are no longer sharp distinctions between combatants and noncombatants, between military targets and the sanctuary of civilian areas. Nor can we separate the economic facts from the problems of defense and security. [The] President, who is Comander in Chief and who represents the interests of all the people, must be able to act at all times to meet any sudden threat to the nation's security. 2 Harry S. Truman, Memoirs: Years of Trial and Hope 478 (1956) (commenting on the Court's decision in the Steel Seizure Case). n138. Rossiter, supra note 54, at 308-09. n139. President Truman warned that **upon the functioning of a strong executive "depends the** survival of each of us **and also on that depends the survival of the free world**." The Powers of the Presidency 114 (Robert S. Hirschfield ed., 1968). See also, e.g., Speech by John F. Kennedy delivered to the National Press Club (Jan. 14, 1960), in Hirschfield, supra, at 129-31; Congress, the President, and the War Powers: Hearings Before the Subcomm. on Nat'l Sec. Policy and Scientific Developments of the House Comm. on Foreign Affairs, 91st Cong. 12-13 (1970) (statement of McGeorge Bundy, President, Ford Foundation); Congressional Oversight of Executive Agreements: Hearings on S. 3475 Before the Subcomm. on Separation of Powers of the Senate Comm. of the Judiciary, 92d Cong. 237-40 (1972) (statement of Nicholas Katzenbach, Former Attorney General and Former Undersecretary of State).

## 2

NSA reform is in a narrow Congressional sweet spot

David Hawkings, Roll Call, 3/25/14, Hill’s Bipartisan Deadlock on Phone Records May Be Easing, blogs.rollcall.com/hawkings/obama-nsa-reform-plan-could-ease-congressional-deadlock-on-spying/2/

Eight months ago, in one of its most important and fascinatingly nonpartisan votes of recent memory, the House came up just seven members short of eviscerating the government’s vast effort to keep tabs on American phone habits. The roll call revealed a profound divide in Congress on how assertively the intelligence community should be allowed to probe into the personal lives of private citizens in the cause of thwarting terrorism. It is a split that has stymied legislative efforts to revamp the National Security Agency’s bulk data collection programs. Until now, maybe. Senior members with jurisdiction over the surveillance efforts, in both parties and on both sides of the Hill, are signaling generalized and tentative but nonetheless clear support for the central elements of a proposed compromise that President Barack Obama previewed Tuesday and will formally unveil by week’s end. The president, in other words, may be close to finding the congressional sweet spot on one of the most vexing problems he’s faced — an issue that surged onto Washington’s agenda after the secret phone records collection efforts were disclosed by former NSA contractor Edward Snowden. If Obama can seal the deal, which he’s pledged to push for by the end of June, it would almost surely rank among his most important second-term victories at the Capitol. It also would create an exception that proves the rule about the improbability of bipartisan agreement on hot-button issues in an election season.

“I recognize that people were concerned about what might happen in the future with that bulk data,” Obama said at a news conference in The Hague, where he’s been working to gain support for containing Russia from a group of European leaders who have their own complaints about U.S. spying on telephone calls. “This proposal that’s been presented to me would eliminate that concern.” The top two members of the House Intelligence Committee, GOP Chairman Mike Rogers of Michigan and ranking Democrat C.A. Dutch Ruppersberger of Maryland, introduced their own bill to revamp surveillance policy Tuesday — and declared they expect it would track very closely with the language coming from the administration. They said they had been negotiating with White House officials for several weeks and viewed the two proposals as compatible. At their core, both the Obama and House bills would end the NSA practice of sucking up and storing for five years the date and time, duration and destination of many millions of phone calls placed or received by Americans. Instead, the phone companies would be required to retain this so-called metadata (and comparable information about email and Internet use) for 18 months, their current practice. And the government would have to obtain something like a search warrant from the Foreign Intelligence Surveillance Court, meaning in each discreet case a judge would limit how deeply the telecom companies would have to query their databases in hopes of finding calling patterns that suggest national security threats. Since both Rogers and Ruppersberger have been prominent defenders of the bulk collection system, any agreement they reach that has Obama’s blessing can be expected to pass the House. It should garner support from a lopsided majority of the 217 House members (three-fifths of the Republicans and two-fifths of the Democrats) who voted to stick with the status quo last July. And it stands a chance to win over at least some on the other side — an unusual coalition of 94 mostly libertarian-leaning tea party Republicans and 111 liberal Democrats, who say NSA searches of the databases should be limited to information about existing targets of investigations. But one leader of that camp vowed to work for the defeat of any measure that looks like either the Obama or Intelligence panel plans. Republican Rep. Jim Sensenbrenner of Wisconsin, who as chairman of House Judiciary a decade ago was instrumental in writing the Patriot Act, believes that law has been grossly misapplied by the NSA to invade personal privacy much too easily. Sensenbrenner said he would continue to push his measure to almost entirely prevent the NSA from looking at telecommunications metadata. But the sponsor of the companion Senate bill, Judiciary Chairman Patrick J. Leahy, D-Vt., said he would remain open to finding the makings of a deal in the Obama plan. Leahy signaled the legislative negotiating would be much smoother if Obama suspended the bulk data collection during the talks. Much more enthusiastic was Calfornia’s Dianne Feinstein, the Democratic chairwoman of the Senate Intelligence Committee, who said she generally supports the House proposal and views Obama’s plan “a worthy effort.” Her committee’s top Republican, the retiring Saxby Chambliss of Georgia, was a bit more equivocal but gave a strong indication he was eager to cut a deal based on the ideas from the House and the White House.

The plan’s fight over authority crowds it out

John Grant, Minority Counsel for the Senate Committee on Homeland Security and Governmental Affairs, 8/13/2010, Will There Be Cybersecurity Legislation?, jnslp.com/2010/08/13/will-there-be-cybersecurity-legislation/

In the course of just a few decades, information technology has become an essential component of American life, playing a critical role in nearly every sector of the economy. Consequently, government policy affecting information technology currently emanates from multiple agencies under multiple authorities – often with little or no coordination. The White House’s Cyberspace Policy Review (the Review) wisely recognized that the first priority in improving cybersecurity is to establish a single point of leadership within the federal government and called for the support of Congress in pursuit of this agenda. Congressional involvement in some form is inevitable, but there is considerable uncertainty as to what Congress needs to do and whether it is capable of taking action once it decides to do so. With an agenda already strained to near the breaking point by legislation to address health care reform, climate change, energy, and financial regulatory reform – as well as the annual appropriations bills – the capacity of Congress to act will depend, in some part, on the necessity of action. For the last eight years, homeland security has dominated the congressional agenda. With the memory of the terrorist attacks of September 11 becoming ever more distant, there may be little appetite for taking on yet another major piece of complex and costly homeland security legislation.

That’s key to NSA authority—Congress would easily reject all NSA surveillance

Brendan Sasso, National Journal, 3/25/14, Why Obama and His NSA Defenders Changed Their Minds, www.nationaljournal.com/tech/why-obama-and-his-nsa-defenders-changed-their-minds-20140325

It was only months ago that President Obama, with bipartisan backing from the heads of Congress's Intelligence committees, was insisting that the National Security Agency's mass surveillance program was key to keeping Americans safe from the next major terrorist attack. They were also dismissing privacy concerns, saying the program was perfectly legal and insisting the necessary safeguards were already in place. But now, Obama's full-speed ahead has turned into a hasty retreat: The president and the NSA's top supporters in Congress are all pushing proposals to end the NSA's bulk collection of phone records. And civil-liberties groups—awash in their newly won clout—are declaring victory. The question is no longer whether to change the program, but how dramatically to overhaul it. So what changed? It's not that Obama and his Hill allies suddenly saw the error of their ways and became born-again privacy advocates. Instead, with a critical section of the Patriot Act set to expire next year, they realized they had no choice but to negotiate. If Congress fails to reauthorize that provision—Section 215—by June 1, 2015, then the NSA's collection of U.S. records would have to end entirely. And the growing outrage prompted by the Snowden leaks means that the NSA's supporters would almost certainly lose an up-or-down vote on the program. Rep. Adam Schiff, a Democratic member of the House Intelligence Committee, said that looming sunset is what forced lawmakers to the bargaining table. "I think what has changed is the growing realization that the votes are simply not there for reauthorization," he said in an interview. "I think that more than anything else, that is galvanizing us into action."

Obama and the House Intelligence Committee leaders believe their proposals are now the NSA's best bet to retain some power to mine U.S. phone records for possible terror plots. Senate Intelligence Committee Chairwoman Dianne Feinstein, another leading NSA defender, also indicated she is on board with the changes, saying the president's proposal is a "worthy effort." And though the Hill's NSA allies are now proposing reforms to the agency, they don't seem particularly excited about it. At a Capitol Hill press conference Tuesday, Rep. Mike Rogers, the Republican chairman of the House Intelligence Committee, and Rep. Dutch Ruppersberger, the panel's top Democrat, often sounded like they were arguing against their own bill that they were unveiling. "I passionately believe this program has saved American lives," Rogers said. Ruppersberger said if the program had been in place in 2001, it may have prevented the Sept. 11 attacks. But the lawmakers acknowledged there is broad "discomfort" with the program as it is currently structured. "We need to do something about bulk collection because of the perception of our constituents," Ruppersberger admitted. Under their legislation, the vast database of phone records would stay in the hands of the phone companies. The NSA could force the phone companies to turn over particular records, and the Foreign Intelligence Surveillance Court would review the NSA orders after the fact. But Rogers rejected a reporter's suggestion that the NSA should have never had control of the massive database of phone records in the first place. "There was no abuse, no illegality, no unconstitutionality," he said. For all their hesitance, however, Rogers and company much prefer their version to a competing proposal to change the way the government gathers information. That would be the USA Freedom Act, a proposal from Senate Judiciary Committee Chairman Patrick Leahy and Rep. Jim Sensenbrenner that Rogers and his ilk fear would go too far in hamstringing the NSA. The USA Freedom Act would require the NSA to meet a tougher standard for the data searches and would limit other NSA programs, such as Internet surveillance of people overseas. Additionally, President Obama is expected to unveil his own plan to reform the controversial phone data collection program this week. According to The New York Times, Obama's proposal would also keep the database in the hands of the phone companies. His plan would have tougher judicial oversight than the House bill by requiring pre-approval from the court for every targeted phone number, the newspaper reported. But though the momentum has shifted and officials seem to be coalescing around a framework for overhauling the NSA program, the question is far from settled. Leahy and Sensenbrenner are not backing off from their USA Freedom Act, and outside groups will continue their policy push as well.

NSA surveillance authority key to prevent catastrophic cyber-attacks—reforms key to overall NSA role in cyber

Jack Goldsmith, Henry L. Shattuck Professor at Harvard Law School, 10/10/13, We Need an Invasive NSA, www.newrepublic.com/article/115002/invasive-nsa-will-protect-us-cyber-attacks

Ever since stories about the National Security Agency’s (NSA) electronic intelligence-gathering capabilities began tumbling out last June, The New York Times has published more than a dozen editorials excoriating the “national surveillance state.” It wants the NSA to end the “mass warehousing of everyone’s data” and the use of “back doors” to break encrypted communications. A major element of the Times’ critique is that the NSA’s domestic sweeps are not justified by the terrorist threat they aim to prevent.

At the end of August, in the midst of the Times’ assault on the NSA, the newspaper suffered what it described as a “malicious external attack” on its domain name registrar at the hands of the Syrian Electronic Army, a group of hackers who support Syrian President Bashar Al Assad. The paper’s website was down for several hours and, for some people, much longer. “In terms of the sophistication of the attack, this is a big deal,” said Marc Frons, the Times’ chief information officer. Ten months earlier, hackers stole the corporate passwords for every employee at the Times, accessed the computers of 53 employees, and breached the e-mail accounts of two reporters who cover China. “We brought in the FBI, and the FBI said this had all the hallmarks of hacking by the Chinese military,” Frons said at the time. He also acknowledged that the hackers were in the Times system on election night in 2012 and could have “wreaked havoc” on its coverage if they wanted.

Such cyber-intrusions threaten corporate America and the U.S. government every day. “Relentless assaults on America’s computer networks by China and other foreign governments, hackers and criminals have created an urgent need for safeguards to protect these vital systems,” the Times editorial page noted last year while supporting legislation encouraging the private sector to share cybersecurity information with the government. It cited General Keith Alexander, the director of the NSA, who had noted a 17-fold increase in cyber-intrusions on critical infrastructure from 2009 to 2011 and who described the losses in the United States from cyber-theft as “the greatest transfer of wealth in history.” If a “catastrophic cyber-attack occurs,” the Timesconcluded, “Americans will be justified in asking why their lawmakers ... failed to protect them.”

The Times editorial board is quite right about the seriousness of the cyber- threat and the federal government’s responsibility to redress it. What it does not appear to realize is the connection between the domestic NSA surveillance it detests and the governmental assistance with cybersecurity it cherishes. To keep our computer and telecommunication networks secure, the government will eventually need to monitor and collect intelligence on those networks using techniques similar to ones the Timesand many others find reprehensible when done for counterterrorism ends.

The fate of domestic surveillance is today being fought around the topic of whether it is needed to stop Al Qaeda from blowing things up. But the fight tomorrow, and the more important fight, will be about whether it is necessary to protect our ways of life embedded in computer networks.

Anyone anywhere with a connection to the Internet can engage in cyber-operations within the United States. Most truly harmful cyber-operations, however, require group effort and significant skill. The attacking group or nation must have clever hackers, significant computing power, and the sophisticated software—known as “malware”—that enables the monitoring, exfiltration, or destruction of information inside a computer. The supply of all of these resources has been growing fast for many years—in governmental labs devoted to developing these tools and on sprawling black markets on the Internet.

Telecommunication networks are the channels through which malware typically travels, often anonymized or encrypted, and buried in the billions of communications that traverse the globe each day. The targets are the communications networks themselves as well as the computers they connect—things like the Times’ servers, the computer systems that monitor nuclear plants, classified documents on computers in the Pentagon, the nasdaq exchange, your local bank, and your social-network providers.

To keep these computers and networks secure, the government needs powerful intelligence capabilities abroad so that it can learn about planned cyber-intrusions. It also needs to raise defenses at home. An important first step is to correct the market failures that plague cybersecurity. Through law or regulation, the government must improve incentives for individuals to use security software, for private firms to harden their defenses and share information with one another, and for Internet service providers to crack down on the botnets—networks of compromised zombie computers—that underlie many cyber-attacks. More, too, must be done to prevent insider threats like Edward Snowden’s, and to control the stealth introduction of vulnerabilities during the manufacture of computer components—vulnerabilities that can later be used as windows for cyber-attacks.

And yet that’s still not enough. The U.S. government can fully monitor air, space, and sea for potential attacks from abroad. But it has limited access to the channels of cyber-attack and cyber-theft, because they are owned by private telecommunication firms, and because Congress strictly limits government access to private communications. “I can’t defend the country until I’m into all the networks,” General Alexander reportedly told senior government officials a few months ago.

For Alexander, being in the network means having government computers scan the content and metadata of Internet communications in the United States and store some of these communications for extended periods. Such access, he thinks, will give the government a fighting chance to find the needle of known malware in the haystack of communications so that it can block or degrade the attack or exploitation. It will also allow it to discern patterns of malicious activity in the swarm of communications, even when it doesn’t possess the malware’s signature. And it will better enable the government to trace back an attack’s trajectory so that it can discover the identity and geographical origin of the threat.

Alexander’s domestic cybersecurity plans look like pumped-up versions of the NSA’s counterterrorism-related homeland surveillance that has sparked so much controversy in recent months. That is why so many people in Washington think that Alexander’s vision has “virtually no chance of moving forward,” as the Times recently reported. “Whatever trust was there is now gone,” a senior intelligence official told Times.

There are two reasons to think that these predictions are wrong and that the government, with extensive assistance from the NSA, will one day intimately monitor private networks.

The first is that the cybersecurity threat is more pervasive and severe than the terrorism threat and is somewhat easier to see. If the Times’ website goes down a few more times and for longer periods, and if the next penetration of its computer systems causes large intellectual property losses or a compromise in its reporting, even the editorial page would rethink the proper balance of privacy and security. The point generalizes: As cyber-theft and cyber-attacks continue to spread (and they will), and especially when they result in a catastrophic disaster (like a banking compromise that destroys market confidence, or a successful attack on an electrical grid), the public will demand government action to remedy the problem and will adjust its tolerance for intrusive government measures.

At that point, the nation’s willingness to adopt some version of Alexander’s vision will depend on the possibility of credible restraints on the NSA’s activities and credible ways for the public to monitor, debate, and approve what the NSA is doing over time.

Which leads to the second reason why skeptics about enhanced government involvement in the network might be wrong. The public mistrusts the NSA not just because of what it does, but also because of its extraordinary secrecy. To obtain the credibility it needs to secure permission from the American people to protect our networks, the NSA and the intelligence community must fundamentally recalibrate their attitude toward disclosure and scrutiny. There are signs that this is happening—and that, despite the undoubted damage he inflicted on our national security in other respects, we have Edward Snowden to thank.

Nuclear war

Andres and Breetz 11Richard Andres, Professor of National Security Strategy at the National War College and a Senior Fellow and Energy and Environmental Security and Policy Chair in the Center for Strategic Research, Institute for National Strategic Studies, at the National Defense University, and Hanna Breetz, doctoral candidate in the Department of Political Science at The Massachusetts Institute of Technology, Small Nuclear Reactorsfor Military Installations:Capabilities, Costs, andTechnological Implications, [www.ndu.edu/press/lib/pdf/StrForum/SF-262.pdf](http://www.ndu.edu/press/lib/pdf/StrForum/SF-262.pdf)

More recently, awareness has been growing that the grid is also vulnerable to purposive attacks. A report sponsored by the Department of Homeland Security suggests that a coordinated cyberattack on the grid could result in a third of the country losing power for a period of weeks or months.9 Cyberattacks on critical infrastructure are not well understood. It is not clear, for instance, whether existing terrorist groups might be able to develop the capability to conduct this type of attack. It is likely, however, that some nation-states either have or are working on developing the ability to take down the U.S. grid. In the event of a war with one of these states, it is possible, if not likely, that parts of the civilian grid would cease to function, taking with them military bases located in affected regions. Government and private organizations are currently working to secure the grid against attacks; however, it is not clear that they will be successful. Most military bases currently have backup power that allows them to function for a period of hours or, at most, a few days on their own. If power were not restored after this amount of time, the results could be disastrous. First, military assets taken offline by the crisis would not be available to help with disaster relief. Second, during an extended blackout, global military operations could be seriously compromised; this disruption would be particularly serious if the blackout was induced during major combat operations. During the Cold War, this type of event was far less likely because the United States and Soviet Union shared the common understanding that blinding an opponent with a grid blackout could escalate to nuclear war. America’s current opponents, however, may not share this fear or be deterred by this possibility.

## 3

Legal restraints motivated by conflict narratives naturalize exceptional violence—the impact is endless intervention and WMD warfare

Morrissey ‘11

John Morrissey ', Lecturer in Political and Cultural Geography, National University of Ireland, Galway; has held visiting research fellowships at University College Cork, City University of New York, Virginia Tech and the University of Cambridge. 2011, “Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” Geopolitics, Volume 16, Issue 2, 2011

In the ‘biopolitical nomos’ of camps and prisons in the Middle East and elsewhere, managing detainees is an important element of the US military project. As CENTCOM Commander General John Abizaid made clear to the Senate Armed Services Committee in 2006, “an essential part of our combat operations in both Iraq and Afghanistan entails the need to detain enemy combatants and terrorists”.115 However, it is a mistake to characterize as ‘exceptional’ the US military’s broader biopolitical project in the war on terror. Both Minca’s and Agamben’s emphasis on the notion of ‘exception’ is most convincing when elucidating how the US military has dealt with the ‘threat’ of enemy combatants, rather than how it has planned for, legally securitized and enacted, its ‘own’ aggression against them. It does not account for the proactive juridical warfare of the US military in its forward deployment throughout the globe, which rigorously secures classified SOFAs with host nations and protects its armed personnel from transfer to the International Criminal Court. Far from designating a ‘space of exception’, the US does this to establish normative parameters in its exercise of legally sanctioned military violence and to maximize its ‘operational capacities of securitization’. A bigger question, of course, is what the US military practices of lawfare and juridical securitization say about our contemporary moment. Are they essentially ‘exceptional’ in character, prompted by the so-called exceptional character of global terrorism today? Are they therefore enacted in ‘spaces of exceptions’ or are they, in fact, simply contemporary examples of Foucault’s ‘spaces of security’ that are neither exceptional nor indeed a departure from, or perversion of, liberal democracy? As Mark Neocleous so aptly puts it, has the “liberal project of ‘liberty’” not always been, in fact, a “project of security”?116 This ‘project of security’ has long invoked a powerful political dispositif of ‘executive powers’, typically registered as ‘emergency powers’, but, as Neocleous makes clear, of the permanent kind.117 For Neocleous, the pursuit of ‘security’ – and more specifically ‘capitalist security’ – marked the very emergence of liberal democracies, and continues to frame our contemporary world. In the West at least, that world may be endlessly registered as a liberal democracy defined by the ‘rule of law’, but, as Neocleous reminds us, the assumption that the law, decoupled from politics, acts as the ultimate safeguard of democracy is simply false – a key point affirmed by considering the US military’s extensive waging of liberal lawfare. As David Kennedy observes, the military lawyer who “carries the briefcase of rules and restrictions” has long been replaced by the lawyer who “participate[s] in discussions of strategy and tactics”.118 The US military’s liberal lawfare reveals how **the rule of law is simply another securitization tactic in liberalism’s ‘pursuit of security’;** a pursuit that paradoxically eliminates fundamental rights and freedoms in the ‘name of security’.119 This is a ‘liberalism’ defined by what Michael Dillon and Julian Reid see as a commitment to waging ‘biopolitical war’ for the securitization of life – ‘killing to make live’.120 And for Mark Neocleous, (neo)liberalism’s fetishization of ‘security’ **– as both a discourse and a technique of government** – has resulted in a world defined by anti-democratic technologies of power.121 In the case of the US military’s forward deployment on the frontiers of the war on terror – and its juridical tactics to secure biopolitical power thereat – this has been **made possible by constant reference to a neoliberal ‘project of security’** registered in a language of ‘endless emergency’ to ‘secure’ the geopolitical and geoeconomic goals of US foreign policy.122 The US military’s continuous and indeed growing military footprint in the Middle East and elsewhere can be read as a ‘permanent emergency’,123 the new ‘normal’ in which geopolitical military interventionism and its concomitant biopolitical technologies of power are necessitated by the perennial political economic ‘need’ to securitize volatility and threat. Conclusion: enabling biopolitical power in the age of securitization “Law and force flow into one another. We make war in the shadow of law, and law in the shadow of force” – David Kennedy, Of War and Law 124 Can a focus on lawfare and biopolitics help us to **critique our contemporary moment’s proliferation of practices of securitization** – practices that appear to be primarily concerned with coding, quantifying, governing and anticipating life itself? In the context of US military’s war on terror, I have argued above that it can. If, as David Kennedy points out, the “emergence of a global economic and commercial order has amplified the role of background legal regulations as the strategic terrain for transnational activities of all sorts”, this also includes, of course, ‘warfare’; and for some time, the US military has recognized the “opportunities for creative strategy” made possible by proactively waging lawfare beyond the battlefield.125 As Walter Benjamin observed nearly a century ago, at the very heart of military violence is a “lawmaking character”.126 And it is this ‘lawmaking character’ that is integral to the biopolitical technologies of power that secure US geopolitics in our contemporary moment. US lawfare **focuses “the attention of the world on this or that excess**” whilst simultaneously arming “the most heinous human suffering **in legal privilege”,** redefining horrific violence as “collateral damage, self-defense, proportionality, or necessity”.127 It involves a mobilization of the law that is precisely channelled towards “**evasion**”, securing 23 classified Status of Forces Agreements and “offering at once the experience of safe ethical distance and careful pragmatic assessment, while **parcelling out responsibility, attributing it, denying it – even sometimes embracing it – as a tactic of statecraft and war”.128** Since the inception of the war on terror, the US military has waged incessant lawfare to legally securitize, regulate and empower its ‘operational capacities’ in its multiples ‘spaces of security’ across the globe – whether that be at a US base in the Kyrgyz Republic or in combat in Iraq. I have sought to highlight here these tactics by demonstrating how the execution of US geopolitics relies upon a proactive legal-biopolitical securitization of US troops at the frontiers of the American ‘leasehold empire’. For the US military, legal-biopolitical apparatuses of security enable its geopolitical and geoeconomic projects of security on the ground; they plan for and **legally condition the ‘milieux’ of military commanders**; and in so doing they **render operational** **the pivotal spaces of overseas intervention of contemporary US national security conceived** in terms of ‘**global governmentality’**.129 In the US global war on terror, it is lawfare that facilitates what Foucault calls the “biopolitics of security” – when life itself becomes the “object of security”.130 For the US military, this involves the eliminating of threats to ‘life’, the creating of operational capabilities to ‘make live’ and the anticipating and management of life’s uncertain ‘future’. Some of the most key contributions across the social sciences and humanities in recent years have divulged how discourses of ‘security’, ‘precarity’ and ‘risk’ function centrally in the governing dispositifs of our contemporary world.131 In a society of (in)security, such discourses have a profound power to invoke danger as “requiring extraordinary action”.132 In the ongoing war on terror, registers of emergency play pivotal roles in the justification of military securitization strategies, where ‘risk’, it seems, has become permanently binded to ‘securitization’. As Claudia Aradau and Rens Van Munster point out, the “perspective **of risk management”** seductively effects practices of military securitization to be seen as necessary, legitimate and indeed therapeutic.133 US tactics of liberal lawfare in the long war – the conditioning of the battlefield, the sanctioning of the privilege of violence, the regulating of the conduct of troops, the interpreting, negating and utilizing 24 of international law, and the securing of SOFAs – are vital security dispositifs of a broader ‘risk- securitization’ strategy involving the deployment of liberal technologies of biopower to “manage dangerous irruptions in the future”.134 It may well be fought beyond the battlefield in “a war of the pentagon rather than a war of the spear”,135 but it is lawfare that ultimately enables the ‘toxic combination’ **of US geopolitics and biopolitics defining the current age of securitization.**

Vote neg to debase the aff’s reliance securitized law in favor of democratic restraints on the President

Stephanie A. Levin 92, law prof at Hampshire College, Grassroots Voices: Local Action and National Military Policy, 40 Buff. L. Rev. 372

In this sense, what is important about federalism is not that it locates power "here" or "there" — not that some things are assigned irretrievably to the federal government or others to the states — but that it creates a tension about power, so that there are competing sources of authority rather than one unitary sovereign. Hannah Arendt has written that "perhaps the greatest American innovation in politics as such was the consistent abolition of sovereignty within the body politic of the republic, the insight that in the realm of human affairs sovereignty and tyranny are the same."194 Akhil Amar has expressed what is actually the same basic insight in a very different formulation, writing that the American innovation was to place sovereignty "in the People themselves. "I9S Whether one views unitary sovereignty as abolished or relocated to the people, the key point is that it is no longer considered to be in any unitary government. Governmental institutions are divided and kept in tension. At the federal level, this is the familiar doctrine of separation of powers. The same principle animates federalism. The tension is valued because it creates space for the expression of suppressed viewpoints and helps to prevent any one orthodoxy from achieving complete hegemony. Amar sums up the contribution that this governmental innovation makes to the liberty of the people by writing: "As with separation of powers, federalism enabled the American People to conquer government power by dividing it. Each government agency, state and national, would have incentives to win the principal's affections by monitoring and challenging the other's misdeeds."196 This is a compelling insight, but the way Professor Amar has framed it presents two difficulties for present purposes. First, by naming only the "state" and "national" governments, it ignores the field of local government action, a field particularly accessible to the direct involvement of the very citizens who constitute Amar's sovereign "People."197 Second, by making the subject of the verb the "government agency," the sentence makes it sound as if it were the "government agency" which acts, rather than recognizing that it is people who act though the agencies of government. Since the focus here is on federalism as a means of fostering civic participation, both of these qualifications are crucial. While state government will sometimes be an excellent locus for citizen action, often local government will provide the best forum for ordinary citizens to find their voices in civic conversation. And because the value of federalism for our purposes is in the enhanced opportunities it provides for citizen participation in policy development, the focus must be not on government institutions acting, but on people acting through them. In summary, three key attributes of participatory federalism must be highlighted. The first is that what is most important is not where government power is assigned — to the federal government, the states, or the localities — but the very fact that there are shared and overlapping powers. This dispersion of power means that the citizen is better protected from the dangers that are inherent in being subject to any one unitary sovereign.198 A second key attribute is that the value of this federalism lies not in the empowerment of government, but in the empowerment of people. Its animating purpose is not to add to or detract from the powers of any particular level of government, but to provide the most fruitful arrangements for enhancing the possibility of genuine citizen control over government. Third, the only meaningful measure of the success or failure of this type of federalism is the extent to which it contributes to increased opportunities for citizens to have a voice in government. This must be not at the level of deceptive abstraction — "the People speak" — but at the very concrete level of actual people with actual voices. The goal is for more people to be able to speak up in settings more empowering than their living rooms — and certainly state and local governments, while not the only possible settings, provide such an opportunity. In conclusion, these general principles of participatory federalism must be linked to the specific case of federalism in connection with military policy. The constitutional arrangements concerning military power which were described in Section II fit with these three attributes of participatory federalism quite well. The first attribute calls for dispersing power by sharing it. As has already been suggested, the military arrangements in the Constitution were designed to achieve exactly this sort of liberating tension between the national government's military powers and the decentralized state and locally-controlled institutions by which these powers were to be carried out. The second attribute calls for empowering people rather than governmental institutions. Here, too, the constitutional arrangements seem to fit. The purpose of the grants of power in the relevant constitutional clauses was not to endow any unit of government with the prerogatives of military power for its own sake. The reason for creating these powers was not to strengthen government but to protect the citizenry — to "provide for the common defense." Given this, it seems anomalous for the federal government — or any branch of the American government — to claim a right to control or use military violence as an inherent attribute of sovereignty.'99 The only justification for this power is in whether it contributes to the security of the citizens. Finally, the idea that federalism should serve the purpose of enhancing citizen voice can also be linked to decentralized arrangements for the control of military power. In the eighteenth century, as I have suggested earlier, the mechanism for expressing "voice" was physical: the militiamember showed up at muster, rifle on shoulder, to participate bodily in a "conversation" about military force.200 Today, it can be hoped that our civic conversation can be more verbal. However, we should translate the underlying meaning of the eighteenth century mechanism — a meaning of citizen participation and consent — into a modality more appropriate to contemporary life rather than relinquish it altogether. I would argue that such a translation leads to three central conclusions. The first is theoretical: we must challenge those mental preconceptions which favor totally centralized power in the military policy arena. We must stop seeing control over military power as belonging "naturally" to the federal government and even more narrowly to the executive branch within it. Instead, we must reconceptualize our understanding of the national arrangements to envision a dynamic and uncertain balance among different sources of power, not only among the three branches of the federal government, but between centralized and decentralized institutions of government as well.201 While the role of the federal government is, of course, crucial, the roles of the states and localities are more than interstitial and should not be allowed to atrophy. Only in this dynamic tension does the best protection for the citizenry lie.

## 4

The 1AC is military futurology, an attempt to secure reality against disorder via force causing apathy–they need to justify their prediction model first.

Matt Carr 10, freelance writer, published in Race & Class, Slouching towards dystopia: the new military futurism, <http://www.societaitalianastoriamilitare.org/libri%20in%20regalo/2010%20CARR%20New-Military-Futurism.pdf>

This determination to shape, control and ‘dominate’ the turbulent and conflict prone twenty-first century in the foreseeable (and unforeseeable) future is a key component of the new military futurism. On the one hand, **military futurism is a by-product of the megalomaniac military doctrine of ‘full spectrum dominance’**. At the same time, its predictions about the future express very real fears amongst the US ruling elite that the United States is inextricably connected to a world that may be slipping out of its control. Perhaps not surprisingly, therefore, **the new military futurists** are often considerably more pessimistic than their predecessors and tend to **paint a very bleak future of an unsafe and unstable world that demands a constant military presence to hold it together**. From Yevgeny Zemyatin’s We to Brave New World and Orwell’s Nineteen Eighty-Four, twentieth-century writers have used dystopian visions of the future as a warning or as a satirical commentary on the often lethal consequences of twentieth-century utopianism. The dystopias of the new military futurists have a very different purpose. The US military often tends to perceive itself as the last bastion of civilisation against encroaching chaos and disorder. **The worse the future is perceived to be, the more these dark visions of chaos and disorder serve to justify limitless military ‘interventions’, technowarfare, techno-surveillance and weapons procurement programmes**, and the predictions of the military futurists are often very grim indeed.

## 5

Restrictions are limitations imposed on action–not reporting and monitoring

**Schiedler-Brown ‘12**

Jean, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, <http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf>

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

Vote negative—

Limits–hundreds of policies raise the costs of Presidential authority – they allow all of them

Ground–the key question is overarching authority in future situations – not programmatic changes

Precision–it’s the most important distinction

Solum, professor of law at UCLA, 2003

(Lawrence, “Legal Theory Lexicon 001: Ex Ante & Ex Post,” <http://lsolum.typepad.com/legal_theory_lexicon/2003/09/legal_theory_le_2.html>)

**If I had to select only one theoretical tool for a** first-year law **student to master**, **it would be the ex post/ex ante distinction**. (Of course, this is cheating, because there is a lot packed into the distinction.) The terminology comes from law and economics, and here is the basic idea:

The ex post perspective is backward looking. From the ex post point of view, we ask questions like: Who acted badly and who acted well? Whose rights were violated? Roughly speaking, we associated the ex post perspective with fairness and rights. The ex post perspective in legal theory is also loosely connected with deontological approaches to moral theory. In general jurisprudence, we might associate the ex post perspective with legal formalism.

The ex ante perspective is forward looking. From the ex ante point of view, we ask questions like: **What affect will this rule have on the future?** Will decision of a case in this way produce good or bad consequences? Again, roughly speaking we associate the ex ante perspective with policy and welfare. The ex ante perspective in legal theory is loosely connected with consequentialist (or utilitarian or welfarist) approaches to moral theory. In general jurisprudence, we might associate the ex ante perspective with legal instrumentalism (or legal realism).

New affs are independently a voter

They destroy in depth debate and research which are key to portable skills

Preround disclosure solves any of their offense

Topicality is a voting issue, or the aff will read a new uncontested aff every debate

## 6

The United States Attorney General should announce that the executive branch will not defend the constitutionality of trying juvenile combatants under the age of eighteen at the time of capture in Article III federal courts as juveniles.

The CP establishes clear constitutional law ending executive authority

Neal Devins, Goodrich Professor of Law and Professor of Government, College of William and Mary, and Saikrishna Prakash, Professor of Law & Sullivan & Cromwell Professor of Law, University of Virginia, April 2012, ARTICLE: THE INDEFENSIBLE DUTY TO DEFEND, 112 Colum. L. Rev. 507

Thus far we argue that the President must defend the Constitution, even when the threat comes from Congress. In so doing, we disagree with the claim in Attorney General James Speed's 1866 opinion, since echoed by some of his successors, that the courts, the Supreme Court in particular, have a preeminent role in statutory and constitutional interpretation. n94 Instead, we assume that the executive should decide for itself whether a law is constitutional. Here we defend that assumption by advancing two related claims. First, nothing in the Constitution requires any one branch to accept the constitutional conclusions of another. Second, Presidents have long acted on their own understanding of the Constitution, believing that they had no duty to follow the constitutional readings of either Congress or the courts. As a matter of text and structure, the Constitution creates a government in which each of the three federal branches may reach its own constitutional conclusions. As each tries to satisfy its duties and exercises its powers, each must weigh the constitutionality of its actions. In considering these grave matters, they may act upon their own conclusions, for the Constitution never crowns one branch the supreme expositor of the entire Constitution, such that the others must subscribe to its readings. n95 Congress is supreme with respect to impeachment, the President with respect to pardons, and the courts with respect to who wins cases. But the Constitution nowhere anoints any entity or branch as the final arbiter of the meaning of the laws or the Constitution. Focusing on the President, the Constitution nowhere asks, much less demands, the President to seek or accept the constitutional views of other entities as he exercises his office and preserves, protects, and defends the Constitution. Consistent with our claim, there are no means by which he can demand the constitutional opinions of individual members or Congress as a whole. Similarly, he cannot demand the opinions of a district court judge, much less Justices. n96 There are two exceptions to this general principle. First, the President can demand the Senate's advice on nominees and treaties. n97 Yet, as the word "advice" connotes, he need not heed its suggestions, constitutional or otherwise. Rather than serving as a generic check on the President's constitutional vision, the advice and consent provisions merely establish that the President cannot appoint or make treaties without Senate consent. Second, the President may demand opinions of the principal officers in the executive departments. n98 Again it is clear from the Clause's phrasing that the power to demand opinions ("he may require") does not come with any obligation to demand them or to follow any advice given. The Clause, fairly construed, makes clear that the President can demand opinions, if he wishes, and that he may make the final determination, notwithstanding the advice he receives. It has always been thus. n99 George Washington received conflicting opinions about the constitutionality of a National Bank before concluding that the Bank was constitutional; n100 Barack Obama likewise received conflicting opinions about the legality of his Libya campaign before concluding that he could bomb Libya. n101 Given that the Constitution never requires the President to seek opinions, never requires him to abide by any opinions received, and never grants him the authority to demand them from other branches, it seems clear that he need not accept the advice or legal conclusions that come from Congress or the courts. n102 He should give Congress the benefit of the doubt on constitutional questions. And out of respect for the learning reflected in judicial opinions, he should do the same with the courts. But as a general matter, the President need no more adopt their statutory and constitutional conclusions than they need embrace his. The President's interpretive independence from Congress should surprise no one. When the President ponders a bill he certainly does not adopt the implicit congressional view that should the bill become law it would be constitutional. n103 Indeed, if Presidents had to adopt congressional views on the constitutionality of bills, they could never veto them on the grounds that they were unconstitutional. Yet since George Washington issued the first veto, n104 Presidents have rejected bills based on the belief that Congress's constitutional conclusions can be wrong. n105 Or consider pardons. n106 The President does no violence to the Constitution when he decides that someone convicted of a crime is worthy of a pardon because he or she was the victim of an unconstitutional law. n107 This is so even if the judiciary has already concluded that the underlying law is constitutional. If people languish in jail pursuant to a law the President believes is unconstitutional, he should pardon them to keep faith with his oath to preserve the Constitution. What is true for presentment and pardons is equally true for law execution. The President need not embrace the implicit view of an enacting Congress that all of its laws are constitutional. When President Jefferson refused to bow to the constitutional theories of the Congress that passed the Sedition Act or the President that signed it, he was right, for nothing [\*529] in the Constitution obliged him to accept the constitutional theories of the Fifth Congress or of John Adams. The President's interpretive independence from Congress makes a good deal of sense. Congress is not designed to provide continuous guidance to the executive or anyone else. It is a bicameral, deliberative, and part-time body that reaches consensus only with difficulty. Moreover, it would be able to do little else if it had to continually direct or countermand, in real time, the executive's preliminary decisions. What of a court's interpretation of the law - its sense of a law's meaning and its constitutionality? Many are certain that the executive must follow the wisdom of the courts. As the Supreme Court intimates from time to time, a court's power "to say what the law is" n108 is not just a power to reach conclusions about what the law means in the course of deciding cases; it is also the power to reach legal conclusions that all others must respect and adopt. On several occasions, the Court had deemed itself "supreme in the exposition of the law of the Constitution" n109 and insisted that its opinions and judgments are "the supreme law of the land." n110 **Self-aggrandizing declarations of supremacy invite skepticism. The Constitution never marks the Supreme Court supreme in its exposition of the Constitution over Presidents**, Congress, the states, or the people. Indeed, as noted above, it says nothing about expositional supremacy at all, suggesting that no such supremacy was established. n111 Of course, the Supremacy Clause makes the Constitution and federal statutes supreme over state laws. n112 But this supremacy clearly says nothing about an interpretational hierarchy across branches, with the Supreme Court standing at the head. Likewise, the Supreme Court is supreme over other courts, in that other courts must look to the Supreme Court for guidance about federal statutes and the Constitution. But that intrabranch supremacy does not, by any stretch of the imagination, establish an interbranch supremacy, any more than the President's more thorough dominance of his branch establishes an interbranch supremacy over Congress and the courts. Article III's case or controversy limitations also suggest that federal courts are not definitive diviners of the meaning of the law or the [\*530] Constitution. Federal courts only have jurisdiction over cases or controversies, meaning that they cannot issue Article III judgments or opinions when they are not deciding cases or controversies. Yet there will be many situations, many questions, where federal courts cannot opine because there will be no case or controversy. n113 It seems unlikely that the Constitution makes the judiciary supreme in its exposition yet greatly constrains its ability to expound. It would be akin to a requirement that religious acolytes obey a particular leader even though the leader is doctrinally incapable of opining on many crucial subjects. The point is that many constraints on the judiciary's power to say what the law is are strange and counterproductive if the judiciary was meant to decide, once and for all, the meaning of the law, including the Constitution. Someone crafting a system where the judiciary was meant to definitively determine the meaning of all laws likely would not have created a constitution that limited the ability of courts to provide guidance to those in need. Or consider the same issue from a different perspective, namely the executive's ability to preclude judicial review. Suppose a penal statute is susceptible to two different interpretations, only one of which raises serious Ex Post Facto Clause issues. If the executive invokes the avoidance canon n114 and chooses the reading that does not raise the constitutional issue, the executive's reading of the statute and the Constitution will be final because the courts will not be able to opine on either. The executive can even have the final word on pure constitutional questions. When President Ronald Reagan acquiesced to the OLC conclusion that the Constitution never granted a line item veto to the President, n115 the Supreme Court never had a chance to decide the question. Indeed, in order to get the matter before any court, Reagan would have had to exercise a line item veto. We believe that Reagan was right on the merits and on the absence of an obligation to exercise a line item veto in order to set up a test case for judicial resolution. The more general point is that **the executive branch regularly reaches** statutory and constitutional conclusions that are finalin the sense that they never find their way into court. This is entirely fitting, for nothing in the Constitution requires the executive to maximize judicial opportunities to opine. Routine executive finality over a host of statutory and [\*531] constitutional matters sits rather uneasily with any notion that the Supreme Court is to decide ultimately, via its opinions, what the laws and Constitution mean. If the special Supreme Court role referenced in recent Department of Justice opinions cannot be justified by text or structure, neither can it be justified by early opinion or practice. The founders never exalted the Supreme Court as some moderns do. Madison, writing as Publius, observed that, because the departments were "perfectly coordinate," none of them could "pretend to an exclusive or superior right of settling the boundaries between their respective powers." n116 What Publius said about separation of powers applies equally to all constitutional questions - none can "pretend to an exclusive or superior right" of deciding the Constitution's meaning. n117 The same skepticism about the role of judicial opinions arises when looking at early practices. Consider, for example, famous presidential rebukes of the Supreme Court. Jefferson never treated William Marbury as an officer, notwithstanding Marbury v. Madison and its claim that John Adams had validly appointed Marbury. n118 Andrew Jackson vetoed the Bank Bill despite John Marshall's opinion in McCulloch v. Maryland. n119 And Abraham Lincoln, in his famous inaugural address, pointedly declared that while Dred Scott decided who won a particular case, its rationale had no preclusive effect on new cases. n120 This approach continues in more recent times. Starting with Franklin Delano Roosevelt, nearly every President has embraced regulatory initiatives and legislative proposals intended to correct perceived constitutional errors by the Supreme Court. n121 In recent memory, Bill Clinton signed legislation "reversing" Supreme Court religious liberty decisionmaking; n122 Barack Obama not only denounced the Court's opinion in Citizens United, he did so in front of several Justices. n123 These conspicuous episodes are part of a healthy interbranch dialogue, one in which the executive hardly treats the Court's pronouncements as if they were the law themselves. In sum, to imagine that the Constitution marks the Supreme Court as supreme in its exposition of the Constitution and laws of the United States, one has to believe two implausible propositions. One has to presume that a Constitution that never grants the Supreme Court a general power to decide all legal questions nonetheless cedes the Court a power to definitively answer such questions in some instances. And one has to discover, buried deep within the Constitution's interstices, an interbranch supremacy on constitutional and legal interpretation even though the Constitution contains nary a word hinting at such dominance. Just to be clear, the President is not above the other branches and he cannot, in the manner of some autocrat, ignore their lawful decisions. To the contrary, the President must faithfully execute the constitutional laws passed by Congress. Likewise, the President must faithfully execute judicial judgments because the power to decide who wins or loses a case rests with those who wield the judicial power. This obligation to enforce judgments exists as an implication of the separation of executive and judicial power. n124 And finally, we are not denying the constitutionality of judicial review. When the courts conclude that some statute cannot be applied to a particular party because it is unconstitutional, the executive cannot apply that statute to the party. We just deny that in the course of deciding who wins and loses particular cases the judiciary authoritatively may declare what the law means for all three branches and the nation. While respect is due to the Supreme Court's opinions, submission is not.

The CP leads to judicial follow-on

Michael Sant'Ambrogio, Assistant Professor of Law, Michigan State University College of Law, January 2014, ARTICLE: The Extra-legislative Veto, 102 Geo. L.J. 351

President Obama's decision not to defend DOMA reinvigorated a debate about whether it is appropriate for the DOJ to abandon the defense of a duly enacted federal statute. n92 But scholars seem to agree that, appropriate or not, [\*365] statutes are weakened when the DOJ abandons their defense. Professor Orin Kerr suggests that the adoption of a contested constitutional theory by the Executive Branch constitutes a "power grab" at the expense of Congress n93 : "[**T]he Executive Branch** essentially **has the power to decide what legislation it will defend based on** whatever **views of the Constitution** are popular or associated with that Administration." n94 Consequently, presidential administrations will simply decline to defend whatever laws they do not like, and **undefended laws will be less likely to survive judicial review**. n95 Similarly, Professor Daniel Meltzer argues that from an institutional perspective, the Executive Branch generally should defend duly enacted laws of Congress. n96 Professor Meltzer suggests that Congress may not be well equipped to defend its laws, at least outside the context of Supreme Court review. n97 Whether Congress even steps in depends upon the politics of each house. n98 Moreover, without the defense of a statute at the trial level, the defenders may not be able to develop the record necessary for strong appellate review. n99 The concern of Kerr and Meltzer is that undefended statutes are more likely to be struck down as unconstitutional by the courts. Professors Robert Delahunty, Neal Devins, Saikrishna Prakash, and John Yoo, on the other hand, argue that there is no constitutionally based duty for the President to defend statutes he believes are unconstitutional. n100 Quite the opposite: they contend that the President's oath to uphold the Constitution compels him to neither defend nor enforce laws that he believes are unconstitutional, although they admit that the President must execute judicial judgments concerning the constitutionality of a statute in the particular case under review. n101 The duty to defend, Devins and Prakash argue, is nothing more than a tool used by the DOJ to enhance its independence and status vis-a-vis Congress and the courts. n102 Unlike Kerr and Meltzer, Devins and Prakash believe that presidents are unlikely to abandon many statutes because they have a "limited constitutional agenda." n103 They calculate that from December 1975 to May 2011, the [\*366] DOJ decided not to defend seventy-seven statutory provisions. n104 Moreover, there are so many exceptions to the duty to defend that the President can already choose not to defend a statute when it suits him. n105 The current state of affairs merely obscures the President's constitutional vision. n106 Though the debate raises unresolved empirical questions about how often the President would choose not to defend congressional statutes if unconstrained by tradition, fear of congressional reprisal, and questions about its constitutionality, **there is no question that such decisions** do **undermine the statutes abandoned by the President**. First, most would-be defenders lack the resources and expertise of the DOJ. n107 Of course, in the case of DOMA, the House was able to hire Paul Clement, the Solicitor General during George W. Bush's second term in office. n108 Mr. Clement has some of the same institutional advantages--familiarity and experience with the Court--that distinguishes the DOJ from most private attorneys. But this comes at a price. Mr. Clement's defense of DOMA reportedly cost the government $ 2.3 million. n109 Perhaps funds can be raised for a few high-profile defenses. But what if Congress had to defend scores of federal statutes? It would be politically and financially untenable for Congress to hire many Paul Clements, particularly to defend statutes such as DOMA that are vulnerable to a multiplicity of challenges because of their impact on thousands of citizens. The prestige of the DOJ and the opportunity to work on interesting high-profile cases enables the DOJ to hire the best and the brightest on the cheap. It would be expensive and wasteful for Congress to hire private attorneys on a regular basis to defend federal statutes. Alternatively, Congress itself might "lawyer up," developing its capacity to appear in court. n110 But this would likely dilute the prestige of the legal counsel for the political branches as each office became the arm of a partisan branch of government. Second, the line between defending and enforcing a statute may be difficult to maintain for long. Any law that the government seeks to use coercively against an individual is ripe for constitutional challenge, and this in turn will force the [\*367] Government to defend the law or risk its demise. Consider the Clinton Administration's decision not to defend a statutory provision that, had it not been ultimately repealed, would have required the discharge of HIV-positive members of the armed services. n111 If the Clinton Administration had decided to enforce the law by instituting discharge proceedings, some of those targeted surely would have challenged the provision's constitutionality. Unless a party steps into the shoes of the Executive and mounts a serious defense of the law, as the House did with DOMA, n112 a court may be reluctant to uphold such an undefended law. Moreover, judicial resolution of the matter will not suffer the usual delays of adversarial litigation. Thus, the Executive will likely not be able to enforce such a law for long, even if it formally appeals adverse judgments by lower courts and ultimately petitions for Supreme Court review, as the Obama Administration did with DOMA. Third, **the President's constitutional view** may itself **impact the law's success in litigation**. The same day Attorney General Holder announced the President's view of DOMA, the plaintiffs in the lawsuit challenging California's referendum prohibiting same-sex marriage filed a motion to vacate the stay pending appeal of the district court's order holding Proposition 8 unconstitutional. n113 The plaintiffs argued that the stay should be lifted because the Attorney General's position meant the proponents of Proposition 8 were not likely to succeed on the merits of their appeal. n114 Thus, the President's constitutional views, though far from binding precedent, provided additional legal authority for advocates of same-sex marriage. Moreover, the Executive Branch has an enviable rate of success before the Supreme Court. The Supreme Court follows the certiorari recommendations of the Office of the Solicitor General almost 80% of the time, n115 grants the Solicitor General's petitions for certiorari 70% of the time, n116 and rules in favor of the government in 60% to 70% of the cases in which the government is a party n117 And of course the Supreme Court ultimately agreed with the Obama Administration that Section 3 of DOMA was unconstitutional. [\*368] Although correlation does not equal causation, n118 it makes sense that the Supreme Court would give greater respect to the constitutional views of a coordinate branch of government headed by the only two political officers elected by the whole nation than to the constitutional views of most parties that come before it. Indeed, the Supreme Court sua sponte solicits the views of the Solicitor General during the certiorari process in about a dozen cases each Term. n119 In sum, though the decision not to defend a federal law is a weak form of the extra-legislative veto (it does not automatically implicate the enforcement or implementation of a law), like the other extra-legislative vetoes discussed herein, it comprises an action taken by the President to undermine or check a law that he opposes. Furthermore, it threatens a statute's survival without seeking legislative repeal.

## 7

#### The President should request a binding ruling from the International Court of Justice on whether he has the authority for requiring that juvenile combatants under the age of eighteen years old at the time of capture be tried by Article III federal courts as juveniles.

Delegating authority on war powers to the ICJ key to restore credibility to the court—solves multilat and signal

Henson, 6

(Sr. Lecturer-IR-Vanderbilt, 8/31, Power in the Judicial Balance: United States Hegemony, Judicial Independence, and the International Court of Justice, Paper presented at the annual meeting of the American Political Science Association)

The International Court of Justice (ICJ) remains an enigma to many scholars in international law and political science. Founded as the judicial organ of the United Nations in 1947, the Court began with great promise to become the legal arbitrator of peaceful settlements between nations and legal advisor to the powerful Security Council. The hope that great power wars could be avoided through the just application of principles in law and the emerging institutions of cooperation among states included high expectations on the new World Court. Nearly forty years later, **the Court operates on the fringes of international politics neglected and criticized at times by the States that created it**. The Court has accepted 111 contentious cases and issued 25 advisory opinions involving 80 nations, yet few scholars include the ICJ in studies of important international institutions or mine its extensive records for insight into the contentious issues it has adjudicated over its nearly half century of work. Critics of the Court argue that cases lack salience in international politics because nations are willing to delegate only insignificant issues to the legal process reserving the important issues for traditional settlements such as force or diplomatic negotiations. This view is challenged by the list of issues brought before the Court including territorial disputes, testing nuclear weapons, attacks on warships, immigration, and covert interventions in conflicts. Critics counter that nations reject decisions of the Court when issues are important and Court rulings are unfavorable. Records show that nations adhere to Court decisions most of the time, nearly eighty to ninety percent depending on how you measure compliance, considerably more than generally acknowledged (Schulte 1 Unless otherwise cited, references to International Court of Justice (ICJ) cases and information concerning the proceedings of the ICJ are taken from electronic archives on the official website of the Court at www.icj-cij.org. Pleadings, judgments, and case backgrounds are publicly available for every contentious case and advisory opinion. One notable exception is the United States rejection of the Court’s jurisdiction in the 1984 case brought by Nicaragua. This case marks a significant change in the Court’s role and will be discussed in more detail. Nevertheless states have shown a remarkable willingness to respect the Court and work vigorously to win the Court’s affirmation on issues important to national interests. The Court also provides scholars with two interesting and unique avenues of research in international relations. First, the Court examines cases involving international conflicts through the strict application of principles in international law. It is a major source of interpretation and application of international law in relations among states. It is unique and extensive in this respect. The Court is secondly a place where broad issues concerning international relations get rehearsed in a controlled environment. The structure of law and format of the Court sets up a micro-experiment in which researchers can observe nations engaging in power politics, waging the Cold War, exercising hegemonic powers, demanding equity, reorganizing post-colonial borders, struggling with the question of nuclear weapons, and a host of other overarching issues on the international political stage. While Court decision have not significantly transformed these situations and problems, Court proceedings enlighten our understanding of the positions held by nations and the issues at stake for them. Two illustrative cases provide insight into the role of the World Court and its evolution alongside major changes in world politics over the last five decades since World War II. The 1947 Corfu Channel and 1984 Nicaragua cases also introduce the theoretical and empirical components of this study. The first case brought before the newly formed International Court was initiated by the United Kindgom against Albania in 1947. Two British warships patrolling in the North Corfur Channel on October 22, 1946 were heavily damaged by mines. The incident resulted in the deaths of forty-four sailors and extensive damage to the ships. Great Britain alleged that Albania was responsible for this intentional act of aggression and violence. As one of the victorious allies in World War II and a major naval power, Great Britain had every capability to respond with military retribution. Interestingly, the British decided instead to get a lawyer and sue Albania for damages in a basic tort case. The case was not an ordinary tort before a civil court but involved two nations on opposite sides of an emerging divide between Western and Eastern Europe with the potential to inflict extreme violence. It was in a sense the test of Great Power restraint and credence to international civility in the wake of a devastating world war. Reference of the case to the International Court of Justice signaled the support of international institutions designed to provide stability and growth to a new system of world politics envisioned by the victorious allied powers. Over the first 12 years of the Court, the United Kingdom, United States, and France brought 20 cases, 53 percent of all cases before the ICJ. The Court decided in favor of United Kingdom and ordered Albania to pay a fine of 843,947 British pounds. Albania accepted the Court’s jurisdiction and decision but argued against the Court’s authority to fix compensation. No compensation was ever paid. Contrast the Corfu case with another incident involving sea mines in the complaint brought by Nicaragua against the United States in 1984. Nicaragua argued to the Court that the United States violated international laws against invention in internal political affairs of another nation by aiding the Contra rebels in their struggle against the Sandinista government. Included in the allegations were reports of mining Nicaraguan harbors and providing military advice and aid to rebel forces. The United States refused to answer the complaint and withdrew from compulsory participation in ICJ cases. The Court proceeded with case and ruled in favor of Nicaragua. The Court also indicated that reparations of 370 million dollars were appropriate on an interim basis to be decided in finality by a later decision. Nicaragua discontinued the case in 1991 and no reparations were ever paid. There are striking parallels and contrasts in these cases. Together the Corfu Channel and Nicaragua cases illustrate the changing nature of international politics in relation to international law and courts. Both cases involved issues of Cold War politics and the use of force. The cases also have two very different characteristics. The Corfu case was initiated by a world power against a relatively small nation while the Nicaragua case was brought by the smaller nation against the world power. Court rulings also followed this reversal. The circumstances and merits of the cases are unique. However, they do highlight questions concerning the choices by participants to utilize the Court. These cases also introduce the idea that distinct patterns exist in usage and decisions of the Court. In order to pursue these questions, theoretical perspectives are useful concerning world circumstances and national interests influencing the decisions of participant nations. The United States emerged from World War II as the economic power in the world. While all the allied nations enjoyed benefits of victory, it was the United States that had suffered the least destruction and national distress. Industrial expansion of the economic base established during the war years propelled the United States to a dominant economic position. The post-war period initiated the rise of a new global hegemon. While the Soviet Union eventually rose to challenge United States supremacy and interests in world affairs, the United States became the clear leader in rebuilding the international political and economic systems. The establishment of the United Nations, implementation of the Bretton Woods agreements, and formations of the International Monetary Fund and World Bank are examples of the institutions created to facilitate a new world order. This order included the dominant role of capitalism and leadership of democratic regimes. The rapid development of international law and a series of conferences resulting in new legal regimes established international norms along the principles of rule of law and national sovereignty. The new system was predictably favorable to the interests of the United States and its partners. From these circumstances derived a theory of economic stability and leadership commonly referred as hegemonic stability. Conceptual development of the idea that economic stability provided by the leadership and dominance of the United States increased economic growth, trade, and wealth worldwide is in many respects attributable to the work of Charles Kindleberger. Kindleberger’s work in political economics is extensive and it oversimplifies his views to identify hegemonic stability as his most prominent contribution; however, Kindleberger is a formative advocate for the idea that stable economic conditions depend on the leadership of a dominant hegemonic power. “Without a stablizer,” Kindleberger says, “the system in my judgment is unstable” (Kindleberger 1981, 253). Leadership from a powerful nation **establishes rules that stabilize the economic system, force cooperation among nations, maintain order, and form international regimes.** The concept that United States leadership and dominant influence largely determined future trajectory was not limited to economics. The idea of hegemonic international law follows a similar logic attributing elements of the potency and development of international law to the role of the hegemon in defining, interpreting, and implementing principles of law in international relations. Detlev Vagt addresses the legal implications of hegemonic influence on international law. In his analysis, Vagt reviews issues such as choice of treaty interpretation, intervention, and prominence of custom. Vagt also makes the point that a “body of law to work with” has historically benefited hegemonic interests and provided a convenient reference point and set of expectations for nations to follow in order to participate in the benefits of international transactions such as trade (Vagt 2001, 845). The theoretical implications of hegemonic stability and hegemonic international law are applicable to the International Court of Justice in several ways. The Court as an organ of the United Nations and institution for establishing the rule of law among nations was a key component of the strategies employed by powerful nations to restructure the international system. According to hegemonic theory, the interests of the United States and its allies were served by solidifying influence over the creation of stable rules governing international interactions. Stability facilitates growth in capital and production of goods from which the United States as hegemon was the greatest beneficiary. Rules developed from a customary system of law based heavily on the most active, vested, and involved nations. Western powers served this stabilizing function while preserving their interests in the status quo. This is clearly illustrated in economic terms through the dominance of the dollar in world currency markets and Western corporations and governments in trade markets such as oil. This dominance extended into international agreements and legal regimes with stability and status quo characterizing international law through custom and treaty. In this environment it was easy to view the International Court of Justice as an instrument of international hegemonic law. The Court’s dependence on customary international law and mandate under the United Nations charter favored the maintenance of status quo, peace, and stability. The bedrock concept of national sovereignty in law and politics provided additional support for the pursuit of national interests by powerful nations. Interestingly, the principle of sovereignty and related concept of non-intervention rebutted the interests of the United States in the Nicaragua case. International leadership and dominance through United States hegemony provides a compelling explanation for the actions toward the International Court of Justice by powerful countries. As mentioned earlier, the United Kingdom, France, and United States brought a large proportion of the cases adjudicated by the Court in its early years. Issues at stake in many of these cases indicated a desire to maintain stability and status quo in international politics and economics. The Corfu Channel case emphasized free passage of ships through vital waterways. This was important to global policing by the British Navy as well as safe trade and transportation. Additional cases brought by major powers focused on fisheries, air space, rights of nationals abroad, corporate interests, and other issues involving freedom of transnational movement and operations. Powerful nations seeking to maintain the advantages of the status quo viewed the ICJ based in customary norms as a useful instrument. The post-war aversion to armed conflict and the economic advantage of stabilization and peace made the Court a desirable recourse. This pattern is evident in the records of contentious cases initiated in the ICJ. Over thirty years ago, William Coplin and Martin Rochester published an article that examined empirically the ICJ and its predecessor Permanent Court of International Justice along with the League of Nations and United Nations (Coplin and Rochester 1972). They attempted to move away from normative and prescriptive analyses of the Court and focus on compiling data that could be used by researcher for statistical evaluation. Their study examined issues such as who participates in the court and how frequently, as well as attributes of participants and their relationships to one another. The Coplin and Rochester study showed that the majority (64%) of initiating states were at least 25% larger based on GDP than the respondent state. The ICJ data examined by Coplin and Rochester ranged from 1947 to 1968. These findings suggest the question of whether the initiation of cases by stronger states is the pattern that continued after 1968. The short answer is that it does not. Data from later periods show a swing in the power differentials between participants toward weaker state initiations. This change can be partially explained within the literature concerning hegemonic theory by the decline of United States influence and control over the international system. Robert Keohane discusses extensively the decline of hegemonic influence in terms of regime coherence and cooperation. Keohane argues that hegemonic stability explains many aspects of post-World War II economic and political cooperation under the leadership of the United States and its close allies, but hegemonic leadership cannot explain every aspect of cooperation. Cooperation exists in a variety of forms and for diverse interests; however, there are clear indications of changes in international cooperation coinciding with a decline in hegemonic control of regimes in money, trade, and oil. Keohane asserts that the oil regime controlled largely by the United States and Great Britain had broken down by the late 1960’s, discord over international monetary policy was strongly evident by 1971, and government trade controls in opposition to GATT principles rose sharply by the 1970’s (Keohane 1984). The general propositions of Keohane’s view of declining hegemony focus on the period 1967-1980. While Keohane emphasizes the persistence of international cooperation, he is quite clear and persuasive in describing a decline in the United States and its powerful allies influence and control over the international economic system. Economic factors are not the only indications of the United States waning hegemonic influence over world affairs. The war in Vietnam, Nixon scandals, Iran hostage crisis, and other political events also eroded United States influence around the world. Holsti and Rosenau point to a loss of consensus in United States foreign policy that contributed to deterioration in leadership (Holsti and Rosenau 1984). These events place the decline of United States hegemonic leadership within the same time period as Keohane’s economic arguments. The gradual decrease in influence and control over world economic markets, institutions, and systems coincides with a decreased use of the Court by the United States and allies such as the United Kingdom and France. Fragmentation of interests and development of diversity and competition within political and economic regimes weakened the ability of the United States to hold together a hegemonic coalition. While the threat of the Soviet Union maintained unity within the North Atlantic Treaty Organization, other regimes such as the Bretton Woods monetary system, GATT, and oil regime began to crumble. Keohane’s analysis places the demise of the hegemonic regime in the mid-1970’s. In this period, the Vietnam War and Nixon scandals also diminished United States influence in world affairs. The year 1975 is used as the date to demarcate this change for the purposes of empirical analysis. The hegemonic models provide an explanation of the initial utilization of the Court by powerful nations and the later decline in cases coinciding with a decline in hegemonic solidarity in economic and political world affairs. The models do not provide a rationale for the trends evident in subsequent periods. The neglect of the Court by world powers suggests that few cases would be submitted to the Court. However, the utilization of the Court actually accelerates from 1.6 cases per year in the period 1947-1975 to 2.3 cases per year 1976-2005. In order to explain this increase, it is useful to look again at the Corfu Channel and Nicaragua cases. While Corfu Channel illustrates the motivation of powerful nations to maintain the status quo, Nicaragua represents a different type of motivation. The complaint brought by this small nation against the United States challenges the hegemonic position of the United States by attempting to restrict its power to promote United States interests in the Western Hemisphere. In the context of Cold War politics, the United States desired the success of anti-Communist regimes. Nicaragua and the Court interpreted United States actions as a violation of the principles of sovereignty and non-intervention. The Nicaragua case reversed the efficacy of the principle of sovereignty for small nations and the power relationship between participants in the Court. This case was not the first occasion that a less powerful nation initiated a complaint before the Court, but it was a high profile moment when the Court was forced into a standoff with the world superpower. The United States **refusal to submit to the Court’s jurisdiction, defiance of the Court decision, and withdrawal from compulsory participation pitted the interests of a powerful state against the credibility of the Court.** It represents a turning point in the Court’s dealings with non-compliance (Schulte 2004, 403-404). Establishing credibility as a Court is dependent on many factors including competence and impartiality, but at the core of the issue of credibility is independence. Laurence Helfer offers a concise and useful definition of independence referring to “insulation” but not necessarily “isolation” from political pressures (Helfer 2006, 2). A demonstration of independence in the face of severe political pressure from the United States is clear in the Nicaragua case. Helfer states, “As a matter of practical judicial decision-making, independence denotes the willingness of judges to decide cases based on generally applicable legal principles rather than political expediency, even where this requires ruling against powerful states” (Helfer 2006, 3). 2 The ruling against the United States in the 1984 case petitioned by Nicaragua gives a strong indication that the ICJ judges were willing to assert their independence from political influence from powerful states. Stephen Krasner relates a similar description of institutional regimes asserting independence stating, “Regimes may assume a life of their own, a life independent of the basic causal factors that led to their creation in the first place” (Krasner 1983). This change in the function of an institution is aligned with the classic dilemma of principal/agent. Delegation by a principal of certain duties and functions carries the risk that the agent will execute those duties contrary to the intent and interests of the principal (Shapiro 2005). The delegation of judicial responsibilities to the ICJ by the powerful nations that instigated the creation of the United Nations carried that risk. The United States administration believed in the Nicaragua case that the ICJ was operating outside of its mandate for political motives, and in a manner contrary to United States interests. In light of the Court’s strong stance, it is likely that increased perception of independence invited more participation by nations challenging the status quo. The Court’s willingness to rule in favor of a small nation and against intense political pressure from the world’s most powerful nation established a favorable precedent for other nations seeking to challenge more powerful nations through the judicial process. Records of contentious cases after 1984 show an increase in several characteristics including total number of cases submitted to the Court, number of new participant nations, and number of cases initiated by the less powerful nation. For the empirical analyses of power differentials this study uses the National Material Capabilities measurement. The statistical model chosen to measure changes in participants’ characteristics is a contingency table (two by two) with four quadrants. The first quadrant at the upper left represents cases before 1976 initiated by the more powerful nation of the two case participants. The lower left represents cases initiated by the less powerful state. The pattern is repeated on the right for cases after 1976. The test statistic applied to the ratios is a chi square distribution. This is a standard measurement for determining the probability function for a contingency table. The chi square measurement of 16.6 indicates that there is less than or equal to .001 chance that the null hypothesis is true and the distribution pattern is a random outcome. This is a very significant result and strongly supports the hypothesis that case initiators before 1976 were predominantly more powerful than the target nation but after 1976 initiators were predominantly less powerful than the target nation. Closer analysis of the data shows that while 1975 is a good central point in the transition, overall Court activity remained low until the Nicaragua case in 1984 with only 6 cases initiated from 1975-1984. This buttresses theoretical explanations of the gap between hegemonic decline and assertion of judicial independence in initiation of new Court cases. Court decisions provide a second approach to analysis of the Court’s interaction with states. Examining the power differential based on favorable decisions rendered by the Court reinforces the concept of a Court in transition from maintenance of the status quo to equity in international relationships. Using the same statistical test, it is evident that a distinct shift occurs in the same time period from favoring stronger states to favoring weaker states in the Court’s decisions. The following table shows that the level of significance is even slightly stronger in this case. Although the earlier period has more cases of powerful states initiating cases and receiving favorable decisions, the correlation between initiating a case and receiving a favorable decision is not significant. The Court’s apparent bias toward the more powerful state in the earlier period is not a factor of favoring the initiator. The same is true of weaker states in the later period. Judicial independence for the ICJ does not necessarily benefit only less powerful nations who challenge the status quo. In his concept of “constrained independence” Helfer identifies advantages that powerful states gain through support of a credible judicial institution. Focusing on international tribunals, Helfer argues that subtle control mechanisms drawn from a variety of political options can, “allow states to **capture the credibility-enhancing benefits** of delegation to formally independent international tribunals while minimizing, although not eliminating, the potential for judicial excesses” (Helfer 2006, 3). Even with limited controls, states that submit authority to independent judicial bodies such as the ICJ are foregoing some sovereign control and potentially sacrificing self-interests. Helfer offers as a rationale for states to forego some control and support independent tribunals based on an argument for **increased credibility to international law commitments.** Increased credibility to commitments **has clear advantages in multilateral negotiations where cooperation depends on mutual trust.** In a world of declining hegemonic control, the United States is more dependent on multilateral cooperation in order to enhance its interests and obtain foreign policy goals. **Renewed support for the ICJ through** compulsory **participation without reservations would improve the U**nited **S**tates **credibility towards international law commitments and build trust in multilateral cooperation.** There are indications of United States willingness to move in this direction in the case of Avena and other Mexican Nationals Mexico v. United States of America 2003. The United States chose not to reject the case and actually filed pleadings to the Court. The ICJ eventually ruled in favor of Mexico. Although the United States strongly opposed this decision, it did not retaliate with political threats in the manner evident during the Nicaragua case in 1984. This is not to say that current United States policy toward international law commitments has taken a strong turn to the positive. Concerns over the newly instituted International Criminal Court and questions about the judicial procedures in cases of **international detainees have created new problems for United States credibility** to commitments in international law. However, the International Court of Justice offers the United States an opportunity to **support international institutional cooperation** while avoiding controversial and sensitive legal issues involving criminality and national security. Willingness to follow a model closer to Helfer’s “constrained independence” would also **improve credibility in respect to other important institutions** such as the World Trade Organization and its system for dispute settlement and compliance.

Credible ICJ crucial to stop global wars

Wawrzycki, 6

(JD-Tulane, “The Waning Power of Shared Sovereignty in International Law: The Evolving Effect of U.S. Hegemony,” 14 Tul. J. Int'l & Comp. L. 579, Spring, Lexis)

International peace and security are the explicit goals of the United Nations. However, these principles of modern international law cannot be protected by the Security Council. As long as that political body allows any nation to retain a permanent seat on the Council with veto powers, it cannot possibly prevent the depredations of one of those nations. Thus, **if the ideals of shared sovereignty and international peace and security are to be protected, it must be through the ICJ**. To do this, the ICJ must stand firm on established international law when the United States - or any nation - violates such law. The ICJ cannot wonder if its decisions will be ignored, rather it must stand on principle and trust that the rest of the world will support it. This also may alert the American people to a motive different and distinct from the public U.S. discourse. The recent U.S. actions in Iraq are clear violations of international customary law, as well as Charter law. The Preemption Doctrine, especially as folded into the Bush Doctrine - which only allows nations of U.S. choosing to use it - unbalances the international order and serves only U.S. ends. Some have called the War on Terrorism (which allegedly includes the war on Iraq) as the next threat to civilization, the new barbarians at the gates of Rome. n277 However, if current affairs are any indication of reality, history does not yet seem to be repeating itself; the walls to the American city do not seem in danger of falling. What then does the rest of the world do when a single state believes it can achieve empire without conquest and "civilizes" with violence only when others refuse its representations of truth? n278 In contradistinction to the era of the Roman Empire, the rest of the world now has an international forum for communication and discourse. [\*622] Yet despite possessing such opportunity, the rest of the world has watched in rapt silence as the United States continues to ignore global consensus. As long as U.S. leaders can promise its people peace within its borders without disruption of its citizens' daily lives, all the while offering them prosperity and American democracy, the people will keep those leaders in power. Using a politic of fear, the United States has convinced its people that it acts as it does only because of the exigency of survival, that otherwise the barbarians will tear down the walls of their new Rome, thus cloaking its hegemonic goals under a safer logos. However, with the international apparatus already in place, such exigency does not exist; there are already mechanisms extant to protect the international community from the scourge of terrorism. Nonetheless, the United States has withdrawn from many of these mechanisms, trusting only in its own might. If the United States continues to disregard these international apparati, **other nations will follow suit.** When enough states do so, **anarchy will eclipse collective security**, setting civilized society back a century as the globe becomes **beset by paranoid neighbors and preemptive wars**. That is, unless the rest of the world acts now to stop such madness and **restores the principles of shared sovereignty and collective security** to their rightful place in the dispositif of international law. If not, in due time, all international law will be routed through the internal legislative bodies of the rising U.S. Empire.

Extinction

Ogbodo, 12

(Law Prof-University of Benin, “An Overview of the Challenges Facing the International Court of Justice in the 21st Century, 18 Ann. Surv. Int'l & Comp. L. 93, Spring, Lexis)

**The effectiveness of the** International Court of Justice (**ICJ) is critical for global survival and progress in the 21st century**. Unfortunately, after over six decades in existence, the Court's influence is declining. This work argues that to revitalize the influence and effectiveness of the Court, some vital reforms must be undertaken in the ICJ system. These reforms must address: (1) the process of election and re-election of ICJ judges; (2) the conflict of interest arising from the presence of permanent members of the United Nations Security Council on the Court; (3) the issue of the Court's compulsory jurisdiction; and (4) the appointment of ad hoc judges under Article 31 of the Statute of the Court. Under the United Nations system, the ICJ is the "principal judicial organ" n1 charged with two main functions, to wit; to assist in the resolution of disputes between states, and to provide advisory opinions to specified international organizations. Although established under the UN Charter, the Court is nevertheless governed by the Charter, n2 the Statute of [\*94] the ICJ, n3 the Rules of Procedure adopted by the judges and amended from time to time, n4 as well as the Practice Directions adopted in October 2001. n5 Though many rules governing the ICJ strive to create an unbiased and honorable entity, the Court's legitimacy and impartiality have nevertheless been compromised by issues surrounding the election and re-election of its judges, the UN Security Council's permanent members' roles in the ICJ, the Court's compulsory jurisdiction, and the nomination of ad hoc judges by parties before the Court. After six decades, the ICJ is at a crossroads as it braces to adjudicate the disputes arising in the 21st century. Modern issues concerning **environmental protection, terrorism, and human trafficking--among many others--are global problems deserving of attention from a global court.** This article argues that the ICJ is ill-equipped to tackle modern international disputes if the jurisdictional and compositional problems outlined above are not remedied, while also offering recommendations for reform.

## 1nc Adv 1

#### Economic model is inevitable

Zakaria, PhD Poli Sci @ Harvard, Editor of Newsweek, 12/12/’9

(Fareed, “The Secrets of Stability,” *Newsweek*, <http://www.newsweek.com/id/226425>)

Beyond all this, though, I believe there's a fundamental reason why we have not faced global collapse in the last year. It is the same reason that we weathered the stock-market crash of 1987, the recession of 1992, the Asian crisis of 1997, the Russian default of 1998, and the tech-bubble collapse of 2000. The current global economic system is inherently more resilient than we think. The world today is characterized by three major forces for stability, each reinforcing the other and each historical in nature.

The first is the spread of great-power peace. Since the end of the Cold War, the world's major powers have not competed with each other in geomilitary terms. There have been some political tensions, but measured by historical standards the globe today is stunningly free of friction between the mightiest nations. This lack of conflict is extremely rare in history. You would have to go back at least 175 years, if not 400, to find any prolonged period like the one we are living in. The number of people who have died as a result of wars, civil conflicts, and terrorism over the last 30 years has declined sharply (despite what you might think on the basis of overhyped fears about terrorism). And no wonder—three decades ago, the Soviet Union was still funding militias, governments, and guerrillas in dozens of countries around the world. And the United States was backing the other side in every one of those places. That clash of superpower proxies caused enormous bloodshed and instability: recall that 3 million people died in Indochina alone during the 1970s. Nothing like that is happening today.

Peace is like oxygen, Harvard's Joseph Nye has written. When you don't have it, it's all you can think about, but when you do, you don't appreciate your good fortune. Peace allows for the possibility of a stable economic life and trade. The peace that flowed from the end of the Cold War had a much larger effect because it was accompanied by the discrediting of socialism. The world was left with a sole superpower but also a single workable economic model—capitalism—albeit with many variants from Sweden to Hong Kong.

This consensus enabled the expansion of the global economy; in fact, it created for the first time a single world economy in which almost all countries across the globe were participants. That means everyone is invested in the same system. Today, while the nations of Eastern Europe might face an economic crisis, no one is suggesting that they abandon free-market capitalism and return to communism. In fact, around the world you see the opposite: even in the midst of this downturn, there have been few successful electoral appeals for a turn to socialism or a rejection of the current framework of political economy. Center-right parties have instead prospered in recent elections throughout the West.

Democratization doesn’t solve war

Kupchan, Professor of International Affairs – Georgetown University, April ‘11

(Charles A, “Enmity into Amity: How Peace Breaks Out,” <http://library.fes.de/pdf-files/iez/07977.pdf>)

Second, contrary to conventional wisdom, democracy is not a necessary condition for stable peace. Although liberal democracies appear to be better equipped to fashion zones of peace due to their readiness to institu­tionalize strategic restraint and their more open societies – an attribute that advantages societal integration and narrative/identity change – regime type is a poor predic­tor of the potential for enemies to become friends. The Concert of Europe was divided between two liberalizing countries (Britain and France) and three absolute monar­chies (Russia, Prussia, and Austria), but nevertheless pre­served peace in Europe for almost four decades. Gen-eral Suharto was a repressive leader at home, but after taking power in 1966 he nonetheless guided Indonesia toward peace with Malaysia and played a leading role in the founding of ASEAN. Brazil and Argentina embarked down the path to peace in 1979 – when both countries were ruled by military juntas. These findings indicate that non-democracies can be reliable partners in peace and make clear that the United States, the EU, and de­mocracies around the world should choose enemies and friends on the basis of other states’ foreign policy behav-ior, not the nature of their domestic institutions.

No impact – states act on interest, not perceptions of "legitimacy" or "hypocrisy"

Cohen 14

MICHAEL A. COHEN is a Fellow at the Century Foundation, PhD in IR from UChicago, Foreign Affairs, March/April 2014, "Hypocrisy Hype", http://www.foreignaffairs.com/articles/140760/michael-a-cohen-henry-farrell-and-martha-finnemore/hypocrisy-hype

A FEATURE, NOT A BUG

Still, even if one grants Farrell and Finnemore the benefit of the doubt, or concedes that even false accusations of American hypocrisy are harmful, it is difficult to accept their larger claim: that Washington’s alleged inability “to consistently abide by the values that it trumpets” will harm the national interest by changing the way other countries act toward the United States. **Manning’s and Snowden’s leaks** proved embarrassing, and Washington has had to deal with some short-term diplomatic fallout. But the leaks are **highly unlikely to have** lasting diplomatic effects. For the sake of comparison, consider the impact of the U.S.-led “global war on terrorism.” After 9/11, U.S. actions and policies on a wide range of issues, **such as torture, detention, and preventive war,** pointed to a fairly wide gulf between the country’s stated principles and its actual behavior. And during the Bush administration, Washington treated some of its close European allies so poorly that their leaders responded by publicly distancing themselves from the United States. In 2002, for example, German Chancellor Gerhard Schröder successfully ran for reelection by trumpeting his opposition to U.S. plans to invade Iraq.

Yet none of these actions led to a wholesale change in the transatlantic alliance or to global bandwagoning against Washington. The reason should be somewhat obvious: **foreign countries,** particularly close U.S. allies, **continue to** rely heavily **on American diplomatic, military, and economic power.** Farrell and Finnemore assert that the potential gap between Washington’s stated values and U.S. actions “creates the risk that other states might decide that the U.S.-led order is fundamentally illegitimate.” **But that risk is** vanishingly small: after all, **the U.S.-led order greatly** (even disproportionately) **benefits** U.S. **allies, and even** some **rivals**. Germany might be angry about the fact that the NSA bugged Chancellor Angela Merkel’s private cell phone, **but not so angry that it will leave NATO or fundamentally change its bilateral relationship** with the United States. Likewise, it is hard to imagine that Brazil would **curtail its significant economic ties** to the United States because of the NSA’s spying on Brazilian President Dilma Rousseff -- or, for that matter, that China would **disengage from the World Trade Organization** because the United States is hacking Chinese computers.

Farrell and Finnemore never explain why other countries would respond to U.S. hypocrisy (real or imagined) by taking steps that could end up **doing them** more harm than good. Throughout the post–Cold War era, **even when the United States has taken actions that other countries opposed, those countries have nevertheless maintained their fealty** to the U.S.-led liberal world order. **That is not a bug of the international system: it is its most important feature, and an indication of its strength.**

This should hardly come as news to Farrell and Finnemore, who have long been insightful observers of international politics. But they perhaps should have looked more closely at some of the very evidence they cite. Consider, for example, their interpretation of remarks made in 2010 by then Secretary of Defense Robert Gates, who said that the national security implications of Manning’s leaks would be “fairly modest.” Farrell and Finnemore claim that Gates downplayed the impact of the leaks because they did not reveal anything that was truly unexpected. But that’s not why Gates thought the effect of the leaks would be mild. “The fact is,” Gates said, “**governments deal with the United States** because it’s in their interest, **not because they like us, not because they trust us,** and not because they believe we can keep secrets. . . . Some governments . . . deal with us because they fear us, some because they respect us, most because they need us. . . . So other nations will continue to deal with us. They will continue to work with us.”

Gates’ full statement, which Farrell and Finnemore disregard, is perhaps the most compelling refutation of their thesis: an unusually candid reminder of precisely how international cooperation works in the U.S.-led global order. Farrell and Finnemore are right to acknowledge that hypocrisy is the “lubricating oil” of that order. But they err in believing that is going to change anytime soon.

#### Data disproves hegemony impacts

Fettweis, 11

Christopher J. Fettweis, Department of Political Science, Tulane University, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence.

The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated.

Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered.

However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation.

It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

#### No escalation

Fettweis, Asst Prof Poli Sci – Tulane, Asst Prof National Security Affairs – US Naval War College, ‘7

(Christopher, “On the Consequences of Failure in Iraq,” *Survival*, Vol. 49, Iss. 4, December, p. 83 – 98)

Without the US presence, a second argument goes, nothing would prevent Sunni-Shia violence from sweeping into every country where the religious divide exists. A Sunni bloc with centres in Riyadh and Cairo might face a Shia bloc headquartered in Tehran, both of which would face enormous pressure from their own people to fight proxy wars across the region. In addition to intra-Muslim civil war, cross-border warfare could not be ruled out. Jordan might be the first to send troops into Iraq to secure its own border; once the dam breaks, Iran, Turkey, Syria and Saudi Arabia might follow suit. The Middle East has no shortage of rivalries, any of which might descend into direct conflict after a destabilising US withdrawal. In the worst case, Iran might emerge as the regional hegemon, able to bully and blackmail its neighbours with its new nuclear arsenal. Saudi Arabia and Egypt would soon demand suitable deterrents of their own, and a nuclear arms race would envelop the region. Once again, however, none of these outcomes is particularly likely.

Wider war

No matter what the outcome in Iraq, the region is not likely to devolve into chaos. Although it might seem counter-intuitive, by most traditional measures the Middle East is very stable. Continuous, uninterrupted governance is the norm, not the exception; most Middle East regimes have been in power for decades. Its monarchies, from Morocco to Jordan to every Gulf state, have generally been in power since these countries gained independence. In Egypt Hosni Mubarak has ruled for almost three decades, and Muammar Gadhafi in Libya for almost four. The region's autocrats have been more likely to die quiet, natural deaths than meet the hangman or post-coup firing squads. Saddam's rather unpredictable regime, which attacked its neighbours twice, was one of the few exceptions to this pattern of stability, and he met an end unusual for the modern Middle East. Its regimes have survived potentially destabilising shocks before, and they would be likely to do so again.

The region actually experiences very little cross-border warfare, and even less since the end of the Cold War. Saddam again provided an exception, as did the Israelis, with their adventures in Lebanon. Israel fought four wars with neighbouring states in the first 25 years of its existence, but none in the 34 years since. Vicious civil wars that once engulfed Lebanon and Algeria have gone quiet, and its ethnic conflicts do not make the region particularly unique.

The biggest risk of an American withdrawal is intensified civil war in Iraq rather than regional conflagration. Iraq's neighbours will likely not prove eager to fight each other to determine who gets to be the next country to spend itself into penury propping up an unpopular puppet regime next door. As much as the Saudis and Iranians may threaten to intervene on behalf of their co-religionists, they have shown no eagerness to replace the counter-insurgency role that American troops play today. If the United States, with its remarkable military and unlimited resources, could not bring about its desired solutions in Iraq, why would any other country think it could do so?17

Common interest, not the presence of the US military, provides the ultimate foundation for stability. All ruling regimes in the Middle East share a common (and understandable) fear of instability. It is the interest of every actor - the Iraqis, their neighbours and the rest of the world - to see a stable, functioning government emerge in Iraq. If the United States were to withdraw, increased regional cooperation to address that common interest is far more likely than outright warfare.

Modern medicine makes a pandemic 90% less lethal than 1918 – models prove

Madhav, principal analyst at catastrophe modeling firm AIR Worldwide, where she leads development of AIR's Pandemic Model, 3/5/2013

(Nita, “What if the 1918 Spanish Flu Happened Today?,” http://www.riskandinsurance.com/story.jsp?storyId=533353677)

**Due to medical and tech**nological **advancements**, **fatality rates would** be almost **90 percent less than what was experienced during** the actual **1918** pandemic. However, increased global travel and an aging population would raise the death rate of a modern day Spanish flu pandemic by 30 percent and 8 percent, respectively, compared to the actual mortality rates in 1918. Taken together, **these modeling results suggest** that **dramatically fewer excess deaths** -- nearly 70 percent fewer than actually occurred in 1918 -- would result from a Spanish flu event today. In spite of this sharp decrease in mortality rates, the simulated modern-day Spanish flu event still disproportionately affects young adults. That can be attributed to the ability of the simulated virus to cause a cytokine storm, demonstrating the need for models to capture the effects of this complex syndrome.

## 1NC Adv 2

No Africa escalation

Adusei, energy expert – Swedish University of Agricultural Sciences, 1/6/’12

(Lord Aikins, “Global Energy Security and Africa's rising Strategic Importance,” <http://www.modernghana.com/news/370533/1/global-energy-security-and-africas-rising-strategi.html>)

Additionally, the prospect of major inter-state conflict in Africa involving the use of deadly weapons that could destabilise oil and gas supply looks relatively distant. Few African countries possess the destructive war machines that Middle Eastern countries have acquired over the last 10 to 20 years. In 2010 for example Saudi Arabia purchased $60 billion worth of U.S. military hardware which experts believe is geared towards countering Iran's arms build up. Again most of Africa's oil is located offshore and could be exploited and transported relatively easily with very little contact with the local population. By way of distance the parts of Africa where most of the oil and gas are located is relatively closer to the U.S. making cost of transportation and the security associated with it relatively less expensive. These factors make oil and gas from Africa more reliable than say the Middle East and remain some of the main reasons why Africa's strategic importance is growing among oil and gas importers.

No impact to oil shocks

Kahn 11 (Jeremy, Jeremy Kahn is an independent journalist who writes about international affairs, politics, business, the environment and the arts. His work has recently appeared in Newsweek International, The New York Times, The Atlantic, Smithsonian, The Boston Globe, The New Republic, Slate, Foreign Policy, Fortune, and Inc., as well as other publications. He has also contributed to the public radio program "Marketplace." Kahn was the managing editor at The New Republic from 2004 to 2006. There he had a hand in most of the magazine's politics and world affairs coverage. He also oversaw the magazine's "Notebook" section. Kahn was twice named one of America's 30 top financial journalists under the age of 30 by the trade publication TJFR. 2/13, “Crude reality”, <http://www.boston.com/bostonglobe/ideas/articles/2011/02/13/crude_reality/>)

The idea that a sudden spike in oil prices spells economic doom has influenced America’s foreign policy since at least 1973, when Arab states, upset with Western support for Israel during the Yom Kippur War, drastically cut production and halted exports to the United States. The result was a sudden quadrupling in crude prices and a deep global recession. Many Americans still have vivid memories of gas lines stretching for blocks, and of the unemployment, inflation, and general sense of insecurity and panic that followed. Even harder hit were our allies in Europe and Japan, as well as many developing nations. Economists have a term for this disruption: an oil shock. The idea that such oil shocks will inevitably wreak havoc on the US economy has become deeply rooted in the American psyche, and in turn the United States has made ensuring the smooth flow of crude from the Middle East a central tenet of its foreign policy. Oil security is one of the primary reasons America has a long-term military presence in the region. Even aside from the Iraq and Afghan wars, we have equipment and forces positioned in Oman, Saudi Arabia, Kuwait, and Qatar; the US Navy’s Fifth Fleet is permanently stationed in Bahrain. But a growing body of economic research suggests that this conventional view of oil shocks is wrong. The US economy is far less susceptible to interruptions in the oil supply than previously assumed, according to these studies. Scholars examining the recent history of oil disruptions have found the worldwide oil market to be remarkably adaptable and surprisingly quick at compensating for shortfalls. Economists have found that much of the damage once attributed to oil shocks can more persuasively be laid at the feet of bad government policies. The US economy, meanwhile, has become less dependent on Persian Gulf oil and less sensitive to changes in crude prices overall than it was in 1973.

War is inevitable

Friedberg 11

Aaron L. Friedberg, professor of politics and international affairs at the Woodrow Wilson School at Princeton University, The National Interest, July/August 2011, "Hegemony with Chinese Characteristics", http://nationalinterest.org/article/hegemony-chinese-characteristics-5439

THE UNITED States and the People’s Republic of China are locked in a quiet but increasingly intense struggle for power and influence, not only in Asia, but around the world. And in spite of what many earnest and well-intentioned commentators seem to believe, the nascent Sino-American rivalry is not merely the result of misperceptions or mistaken policies; it is driven instead by forces that are deeply rooted in the shifting structure of the international system and in the very different domestic political regimes of the two Pacific powers.

Throughout history, relations between dominant and rising states have been uneasy—and often violent. Established powers tend to regard themselves as the defenders of an international order that they helped to create and from which they continue to benefit; rising powers feel constrained, even cheated, by the status quo and struggle against it to take what they think is rightfully theirs. Indeed, this story line, with its Shakespearean overtones of youth and age, vigor and decline, is among the oldest in recorded history. As far back as the fifth century BC the great Greek historian Thucydides began his study of the Peloponnesian War with the deceptively simple observation that the war’s deepest, truest cause was “the growth of Athenian power and the fear which this caused in Sparta.”

The fact that the U.S.-China relationship is competitive, then, is simply no surprise. But these countries are not just any two great powers: Since the end of the Cold War the United States has been the richest and most powerful nation in the world; China is, by contrast, the state whose capabilities have been growing most rapidly. America is still “number one,” but China is fast gaining ground. The stakes are about as high as they can get, and the potential for conflict particularly fraught.

At least insofar as the dominant powers are concerned, rising states tend to be troublemakers. As a nation’s capabilities grow, its leaders generally define their interests more expansively and seek a greater degree of influence over what is going on around them. This means that those in ascendance typically attempt not only to secure their borders but also to reach out beyond them, taking steps to ensure access to markets, materials and transportation routes; to protect their citizens far from home; to defend their foreign friends and allies; to promulgate their religious or ideological beliefs; and, in general, to have what they consider to be their rightful say in the affairs of their region and of the wider world.

As they begin to assert themselves, ascendant states typically feel impelled to challenge territorial boundaries, international institutions and hierarchies of prestige that were put in place when they were still relatively weak. Like Japan in the late nineteenth century, or Germany at the turn of the twentieth, rising powers want their place in the sun. This, of course, is what brings them into conflict with the established great powers—the so-called status quo states—who are the architects, principal beneficiaries and main defenders of any existing international system.

The resulting clash of interests between the two sides has seldom been resolved peacefully. Recognizing the growing threat to their position, dominant powers (or a coalition of status quo states) have occasionally tried to attack and destroy a competitor before it can grow strong enough to become a threat. Others—hoping to avoid war—have taken the opposite approach: attempting to appease potential challengers, they look for ways to satisfy their demands and ambitions and seek to incorporate them peacefully into the existing international order.

But however sincere, these efforts have almost always ended in failure. Sometimes the reason clearly lies in the demands of the rising state. As was true of Adolf Hitler’s Germany, an aggressor may have ambitions that are so extensive as to be impossible for the status quo powers to satisfy without effectively consigning themselves to servitude or committing national suicide. Even when the demands being made of them are less onerous, the dominant states are often either reluctant to make concessions, thereby fueling the frustrations and resentments of the rising power, or too eager to do so, feeding its ambitions and triggering a spiral of escalating demands. Successful policies of appeasement are conceivable in theory but in practice have proven devilishly difficult to implement. This is why periods of transition, when a new, ascending power begins to overtake the previously dominant state, have so often been marked by war.

WHILE THEY are careful not to say so directly, China’s current rulers seem intent on establishing their country as the preponderant power in East Asia, and perhaps in Asia writ large. The goal is to make China the strongest and most influential nation in its neighborhood: a country capable of deterring attacks and threats; resolving disputes over territory and resources according to its preferences; coercing or persuading others to accede to its wishes on issues ranging from trade and investment to alliance and third-party basing arrangements to the treatment of ethnic Chinese populations; and, at least in some cases, affecting the character and composition of their governments. Beijing may not seek conquest or direct physical control over its surroundings, but, despite repeated claims to the contrary, it does seek a form of regional hegemony.

Such ambitions hardly make China unique. Throughout history, there has been a strong correlation between the rapid growth of a state’s wealth and potential power, the geographic scope of its interests, the intensity and variety of the perceived threats to those interests, and the desire to expand military capabilities and exert greater influence in order to defend them. Growth tends to encourage expansion, which leads to insecurity, which feeds the desire for more power. This pattern is well established in the modern age. Looking back over the nineteenth and twentieth centuries, Samuel Huntington finds that

““every other major power, Britain and France, Germany and Japan, the United States and the Soviet Union, has engaged in outward expansion, assertion, and imperialism coincidental with or immediately following the years in which it went through rapid industrialization and economic growth.””

As for China, Huntington concludes, “no reason exists to think that the acquisition of economic and military power will not have comparable effects” on its policies.

Of course the past behavior of other states is suggestive, but it is hardly a definitive guide to the future. Just because other powers have acted in certain ways does not necessarily mean that China will do the same. Perhaps, in a world of global markets and nuclear weapons, the fears and ambitions that motivated previous rising powers are no longer as potent. Perhaps China’s leaders have learned from history that overly assertive rising powers typically stir resentment and opposition.

But China is not just any rising power, and its history provides an additional reason for believing that it will seek some form of regional preponderance. It is a nation with a long and proud past as the leading center of East Asian civilization and a more recent and less glorious experience of domination and humiliation at the hands of foreign invaders. As a number of historians have recently pointed out, China is not so much “rising” as it is returning to the position of regional preeminence that it once held and which its leaders and many of its people still regard as natural and appropriate. The desire to reestablish a Sino-centric system would be consistent with what journalist Martin Jacques describes as

““an overwhelming assumption on the part of the Chinese that their natural position lies at the epicentre of East Asia, that their civilization has no equals in the region, and that their rightful position, as bestowed by history, will at some point be restored in the future.””

Conservative scholar Yan Xuetong puts the matter succinctly: the Chinese people are proud of their country’s glorious past and believe its fall from preeminence to be “a historical mistake which they should correct.” If anything, the “century of humiliation” during which China was weak and vulnerable adds urgency to its pursuit of power. For a nation with China’s history, regaining a position of unchallengeable strength is not seen as simply a matter of pride but rather as an essential precondition for continued growth, security and, quite possibly, survival.

US nuke superiority means no impact—but modernization causes future escalation

Walt 12

Stephen Walt, IR Prof at Harvard, Foreign Policy, August 27, 2012, "Inflating the China threat", http://walt.foreignpolicy.com/posts/2012/08/27/inflating\_the\_china\_threat

What is really going on here? Not much. China presently has a modest strategic nuclear force. It is believed to have only about 240 nuclear warheads, and only a handful of its ballistic missiles can presently reach the United States. By way of comparison, the United States has over 2000 operational nuclear warheads deployed on ICBMs, SLBMs, and cruise missiles, all of them capable of reaching China. And if that were not enough, the U.S. has nearly 3000 nuclear warheads in reserve.

Given its modest capabilities, China is understandably worried by U.S. missile defense efforts. Why? Chinese officials worry about the scenario where the United States uses its larger and much more sophisticated nuclear arsenal to launch a first strike, and then relies on ballistic missile defenses to deal with whatever small and ragged second-strike the Chinese managed to muster. (Missile defenses can't handle large or sophisticated attacks, but in theory they might be able to deal with a small and poorly coordinated reply).

This discussion is all pretty Strangelovian, of course, but nuclear strategists get paid to think about all sorts of elaborate and far-fetched scenarios. In sum, those fiendish Chinese are doing precisely what any sensible power would do: they are trying to preserve their own second-strike deterrent by modernizing their force, to include the development of multiple-warhead missiles that would be able to overcome any defenses the United States might choose to build. As the Wall Street Journal put it:

The [Chinese] goal is to ensure a secure second-strike capability that could survive in the worst of worst-case conflict scenarios, whereby an opponent would not be able to eliminate China's nuclear capability by launching a first strike and would therefore face potential retaliation. As the U.S. Defense Department's Ballistic Missile Defense Review points out, "China is one of the countries most vocal about U.S. ballistic missile defenses and their strategic implications, and its leaders have expressed concern that such defenses might negate China's strategic deterrent."

#### War now destroys China

Ross, staff writer – the National Interest, ‘5

(Robert, “Assessing the China Threat,” The National Interest, Fall)

The outcome of any war between the United States and China would be devastating for Chinese interests. As General Zhu Chenghu recently observed, China has "no capability to fight a conventional war against the United States." Indeed, China would face near inevitable defeat, with the military, political and economic costs far outweighing any costs incurred by the United States. China would risk losing its entire surface fleet, and it would expose its coastal territory, including its port facilities and its surface vessels at port, to U.S. air and missile strikes. The economic costs would also be devastating. China would lose access to Western technologies for many years after the war. It would also lose its peaceful international environment and risk its "peaceful rise" as its economy shifted to long-term war-footing and its budget contended with a protracted U.S.-Chinese arms race, undermining domestic infrastructure development and long-term civilian and defense technology development. Finally, the political costs would be prohibitive. A military loss to the United States could well destroy the nationalist credentials of the Chinese Communist Party and cause its collapse.

China is rapidly modernizing its military - specifically Area Denial and Space capabilities

Friedberg 12

Aaron L. Friedberg, Professor of Politics and International Affairs at the Woodrow Wilson School of Public and International Affairs at Princeton University, Foreign Affairs, September/October 2012, "Bucking Beijing", http://www.foreignaffairs.com/articles/138032/aaron-l-friedberg/bucking-beijing?page=show

The stakes could hardly be higher. Since the mid-1990s, China has been piecing together what Pentagon planners describe as asymmetric "anti-access/area-denial

" (A2/AD) capabilities. At their heart is the development of an arsenal of accurate, relatively inexpensive, conventionally armed ballistic and cruise missiles. With these weapons, China can target virtually every air base and port in the western Pacific, as well as threaten to sink enemy surface vessels (including U.S. aircraft carriers) operating hundreds of miles off its coasts. The People's Liberation Army has also been experimenting with cyberwarfare and antisatellite weapons, and it has begun to expand its small force of intercontinental nuclear missiles.

Absent a strong U.S. response, Chinese planners might eventually come to believe that their growing A2/AD capabilities are sufficiently impressive to scare the United States off from intervening or provoking a confrontation in the region. Worse still, they might convince themselves that if the United States were to intervene, they could cripple its conventional forces in the western Pacific, leaving it with few options other than the threat of nuclear escalation. Maintaining stability requires reducing the likelihood that China's leaders could ever see initiating such an attack as being in their interest. A direct U.S.-Chinese military confrontation is, of course, extremely unlikely. But the aim of the balancing half of U.S. strategy must be to ensure that it remains so, even as China's power grows.

Failing to respond adequately to Beijing's buildup could undermine the credibility of the security guarantees that Washington extends to its Asian allies. In the absence of strong signals of continuing commitment and resolve from the United States, its friends may grow fearful of abandonment, perhaps eventually losing heart and succumbing to the temptations of appeasement. To prevent them from doing so, Washington will have to do more than talk. Together, the United States and its allies have more than sufficient resources with which to balance China. But if Washington wants its allies to increase their own defense efforts, it will have to seriously respond to China's growing capabilities itself. When it comes to Asia, the United States does not have the option of what The New Yorker first described as the Obama administration's penchant for "leading from behind."

# 2nc

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## 2NC ICJ Impact Calc

Only binding US commitment solves---extinction

Carlsson, 8

(Frmr. Head of UN Committee on Rwanda & Frmr. PM of Sweden, “Restoring International Law: Legal, Political and Human Dimensions,” http://www.interactioncouncil.org/sites/default/files/Chairman's\_Report-International%20Law.pdf)

The challenges that humankind is now facing as a result of the global economic development, climate change and the growing world population are unprecedented. The need for a rule-based international society has never been greater. It is equally clear that **to settle differences among States in today’s world by unilateral use of force would** have disastrous effects, yes even **threaten human survival on earth**. Past experience shows that differences that occur among states simply must be resolved by peaceful means as prescribed by the Charter of the United Nations. The need for a rule-based international society has been affirmed by the General Assembly of the United Nations in no uncertain terms. In the Summit Resolution (A/RES/60/1, para. 134) the member states of the Organisation reaffirmed their commitment to the purposes and principles of the UN Charter and international law and to an international order based on the rule of law and international law. Indeed, they clearly stated that such an order “is essential for peaceful coexistence and cooperation among states”. In this 2008 High-level Expert Group meeting held on 19 June 2008 in Hamburg, Germany, the InterAction Council asked how international law could be restored. Particular focus was given to the legal, political and human dimensions. A. International law International law has long been a foundation of state sovereignty just as state sovereignty is one of the fundamental elements of international law. It is expressly referred to among the principles of the Charter of the United Nations. The sovereign equality of all states is in a sense a precondition for world governance. However, the way in which international law has developed over the years has caused a basic shift in the way sovereignty has to be understood in contemporary society. In essence, sovereignty must now be exercised in the interest not of a sovereign but of the citizens and those who reside in the territory of the sovereign state. This applies in particular to observance of human rights standards and the principles of a society under the rule of law. The globalisation and increasing interdependence among states also means that sovereignty must be exercised by entering into **binding legal obligations** and often through membership in international organisations (sometimes referred to as “pooled sovereignty”). The Charter of the United Nations regulates when state sovereignty has to yield as a consequence of decisions by the Security Council in the interest of the maintenance of international peace and security. Over the years, an increasingly comprehensive system of international norms has been developed that imposes binding legal obligations on a range of international actors. In addition, institutions and processes to monitor compliance and address violations of international legal obligations have been established. In many fields the system works well and is more or less taken for granted. In reality, states make great efforts to comply with their international obligations. Seen in this perspective there has been a very positive development towards a rules-based international society. In particular it should be noted that, contrary to what some suggest, the legitimacy of the UN Charter is actually consistently upheld in the rhetoric of all States and the behavior of most. This progress in the building and strengthening of international law and international legal institutions should be commended and supported. However, in certain areas that are central to state sovereignty the situation is more problematic. In recent years, we have seen a tendency among powerful states to act on their own, disregarding their obligations laid down in the UN Charter and other relevant international law. In some quarters there has also been a trend towards an approach that classifies international law as a disposable tool of diplomacy, meaning that its system of rules is merely one of many considerations to be taken into account by governments when deciding what strategy is most likely to advance the national interest in the particular situation at hand. This development is dangerous and entails a serious risk that the world community will lapse back into the society where, ultimately, conflicts were resolved by unilateral use of force – in other words the kind of society that in the past caused major conflicts and human suffering. Such behaviour defeats the purposes and principles of the United Nations and **puts the world at risk.**

## AT: Theory

Education---narrow focus on domestic authority ignores crucial international law issues

Stephan, 9

(Law Prof-UVA, “Treaties and Domestic Law After Medellin v. Texas: Open Doors,” 13 Lewis & Clark L. Rev. 11, Spring, Lexis)

**A failure to understand the role of separation-of-powers issues can lead to confused or incomplete analysis of particular questions**. For the Medellin majority and many of the self-described internationalist advocate-scholars alike, the only constitutional question raised by domestic implementation is the choice between judicial improvisation and enforcement, on the one hand, and legislative control, on the other. What this debate has **largely ignored is the role of the Executive in controlling domestic implementation of international law**. Executive implementation of international law makes many uncomfortable. On the one hand, recognition and bolstering of this authority does make international law easier to implement and therefore might seem more "internationalist." But one of the dirty secrets that international lawyers wish to elide is that much of international law is contested, unclear, ambiguous, and therefore up for grabs. In a constitutional system where political leadership of the Executive is [\*33] significant and change is frequent, embracing Executive implementational authority means opening the door to changing on a regular basis much (although by no means all) of the content of that part of international law that has domestic effect. Moreover, at a policy level, one can cite missteps and blunders by the Executive as evidence that international law is too important to be left in the hands of anyone other than the judiciary. n73 Reasonable people can disagree about the risks associated with Executive lawmaking authority. What seems indisputable, however, is that some **portions of international law reflect the contingent and problematic environment in which international relations take place.** This environment calls out for an ability to respond to changing circumstances informed by an array of sources not reproducible within the framework of a public adversary system. **To abandon Executive lawmaking in favor of either judicial rule or an insistence on express legislative authority impedes, rather than promotes, international cooperation and, in important ways, the progressive development of international law.**

## AT: Perm—Plan + Delegate to ICJ

Mootness DA—ICJ wouldn’t rule on the permutation---the unilateral enactment of the plan prior to the ruling means there is no case in controversy and that the issue is moot

Amerasinghe, 3

(PhD and LLD-U of Cambridge and Fmr. UN Administrative Judge, Jurisdiction of International Tribunals, P. 228-229)

**Mootness** or absence of object in adjudication **is another fundamental reason for a tribunals’ not assuming jurisdiction in a particular case.** In both the Nuclear Tests Cases and the Northern Cameroons Case the ICJ held that it could not proceed with the merits of the case because the issues raised were moot and there was no purpose served by doing so. In the former two cases the claimants in effect requested the Court to find that the carrying out of the nuclear tests in the South Pacific Region giving rise to radioactive fall out was a violation of international law. After the filing of the applications the respondent by unilateral declaration undertook not to carry out atmospheric nuclear tests in the South Pacific Ocean. Even though in both cases only a declaratory judgment was sought, because the Court found that the **dispute had ceased to exist by the time it was ready to give its decision as a result of the unilateral declaration** made by the respondent, so that the object of the claim had been achieved by other means, it decided that **no further judicial action was required.**

Judicial Independence DA—The permutation makes it look like the ICJ will just rubberstamp US policies—kills independence

Alter, 8

(Poli Sci Prof-Northwestern, “Agents or Trustees? International Courts in their Political Context,” European Journal of International Relations March, vol. 14 no. 1 33-63)

P–A theory is intuitively compelling because it hardly seems rational to delegate meaningful power to highly independent actors who do not see themselves as one’s Agent. Giandomenico Majone explains this puzzle by identifying two different logics of delegation — delegation to capture efficiency gains, and delegation to increase the credibility of the Principal and of political decision-making. Where the goal is primarily to reduce transaction costs, Agents are chosen based on whether they will be faithful and the delegation contract is designed to enhance Principal control over the Agent. In fiduciary delegation, what I am calling delegation to Trustees, the goal is to convince some third party that their interests are being protected. **For credibility-enhancing delegation**, the best strategy is to delegate to an Agent whose **values visibly and systematically differ from that of the Principal**, to **make these Agents highly independent** and to refrain from meddling because **‘an Agent bound to follow the directions of the delegating politician could not possibly enhance the commitment’** (Majone, 2001: 110). Majone is mainly trying to explain how different reasons to delegate lead to different contract design choices (e.g. designing Trustees to be institutionally insulated from political pressure). But the difference between Agents and Trustees goes beyond contract design. The reason certain Agents are chosen, the expectations in delegation, the actual powers given to the Agents, and the Agent’s constituency are different in delegation to Trustees, so that the simple fact of delegation may not result in the author of the contract having privileged influence over the Agent. Trustees are actors created through a revocable delegation act where the ‘Trustee’ is: (1) selected because of their personal and/or professional reputation; (2) given authority to make meaningful decisions according to the Trustee’s best judgment or the Trustee’s professional criteria; and (3) is making these decisions on behalf of a beneficiary. Each of these factors contributes to a different politics between Principals and Trustees. 1. Trustees are Selected because of their Personal and/or Professional Reputation Traditional agents are chosen because they are expected to be faithful to the Principal; they have delegated authority based on the Principal having authorized the Agent to act within a certain domain. ‘Trustees’ are chosen because they personally, or their profession in general, bring their own source of legitimacy and authority. Thus in addition to delegated authority, Trustees can have moral authority that comes from embodying or serving some shared higher ideals, with the moral status as a defender of these ideals providing a basis of authority. Trustees can have rational-legal authority if they are disinterested actors applying pre-existing rules in a like fashion across a body of cases, thereby imparting a perception of procedural justice and neutral fairness in their decisions. Trustees can also have expert authority that comes from specialized knowledge that is highly respected (Barnett and Finnemore, 2004: 22–9). Because the Trustee’s reputation as an authoritative actor is so central to their professional and personal identity and success, Trustees care greatly about maintaining their authority and may even choose a political sanction over an action that would be seen as compromising their identity as a moral, rational-legal, and/or expert decision-maker. 2. Trustees are Delegated the Power to Make Meaningful Decisions According to the Trustee’s Best Judgment or the Trustee’s Professional Criteria Agents are meant to implement the decisions of the Principal, thereby providing efficiency gains for the Principal. By contrast, Principals delegate to Trustees to enhance the credibility of the decision by distancing themselves from the decision, and by harnessing the Trustee’s decision-making authority. Because Trustees have been given the power to decide based on their best judgment, Trustees actually have a different mandate than traditional agents. This different mandate shapes expectations and interpretations regarding whether or not Trustees have slipped. Robert Keohane and Ruth Grant capture this difference: The trustee model of delegation … presupposes that officials will use discretion. Hence, the implicit standard for abuse of power differs from that implied by the Principal–Agent model. Deviations of the Agent’s actions from the Principal’s desires would not necessarily constitute abuse of power. A representative or officeholder could defend an unpopular exercise of power as legitimate by showing that it both was within the officer’s jurisdiction and actually served the purposes for which he or she was authorized to act. (Keohane and Grant, 2005: 32)

Ruling against the US crucial to perception of ICJ independence

Voeten, 11

Professor of Geopolitics and Justice in World Affairs-Georgetown, “International Judicial Independence,” 9/30, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1936132)

**Judicial independence is frequently cited as a necessary condition for the effectiveness of international courts** (e.g. Keohane et al, 2000 Helfer and Slaughter 1997). If governments establish international courts to make credible commitments, then they want these courts to be independent. **A court that would simply cater to the wishes of governments would not enhance the credibility of any commitment** and thus would not serve the purposes of governments. Moreover, sociological institutionalists add that the normative appeal of judicial independence enhances the legitimacy of courts.

## AT: Perm--Do CP

The CP isn’t a judicial restriction

McGinnis, 9

(Law Prof-Northwestern, “Medellin and the Future of International Delegation,” 118 Yale L.J. 1712, June, Lexis)

One might argue that the better analogy for some forms of international delegations is not to administrative agencies but to non-Article III courts. For instance, if Congress gives direct effect to the ICJ's interpretation of a treaty [\*1726] and makes that interpretation binding in the United States, **it would appear to be delegating power to a court**, rather than to an administrative agency, both because the ICJ has the trappings of a court and because the ICJ would be given authority to interpret the law rather than exercise discretion. Nevertheless, I am not sure that this is a better analogy. Within our domestic regime, we do not regard the actions of courts in interpreting a law as a delegation of legislative or executive power because of the position of courts in our system of separation of powers. **But international institutions are not defined by the separation of powers of our polity, and thus there is no assurance that institutions labeled courts will behave the way courts do within our system.** In particular, federal courts in the United States are defined by characteristics, such as life tenure and a democratic appointment process, that may not characterize international courts. Moreover, judges on international courts may come from traditions that do not recognize or at least honor a distinction between discretion and formal obligation. n44

## At no ruling

1NC Hensen—ICJ would rule for restrictions—key test case for cred

International law opposes arbitrary and indefinite detention

Metcalf, 9

(Law Prof-Yale, “Kiyemba v. Obama: Brief of International Law Experts as Amici Curiae in Support of Petitioners,” December, http://www.law.yale.edu/documents/pdf/cglc/Kiyamba\_v\_Obama\_brief.pdf)

International human rights law and international humanitarian law reflect the underlying principle that prompt release is the proper remedy for unjustified detention, reflecting a global consensus in support of Petitioners’ position. Aside from the Geneva Conventions and the Covenant, see supra Part I, these legal instruments do not create binding international legal obligations that control the outcome of the present case. Nonetheless, the opinion of the international community as expressed through multilateral conventions, international institutions, and domestic court rulings, may “provide respected and significant confirmation” for the Court’s own conclusions. Roper v. Simmons, 543 U.S. 551, 578 (2005). A. International human rights law condemns prolonged arbitrary detention and supports the prompt and effective release of individuals whose detention is unjustified. International human rights norms condemn prolonged arbitrary detention and support prompt release in cases of unlawful detention. The prohibition against prolonged arbitrary detention found in the International Covenant on Civil and Political Rights – a binding treaty on the United States, see supra Part I.A. – originates in the Universal Declaration of Human Rights. Articles 8 and 9 of the Universal Declaration flatly prohibit prolonged arbitrary detention and further set forth a “right to an effective remedy” for violations of “fundamental rights.” Universal Declaration of Human Rights, G.A. Res. 217A, arts. 8-9, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter Universal Declaration]. For individuals like Petitioners whose “fundamental rights” are being violated through prolonged arbitrary detention, Article 8’s right to an “effective remedy” necessarily means the right to be released. The United States was a central force behind the promulgation of the Universal Declaration in 1948, see Mary Ann Glendon, A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights 87, 89 (2001), and the United States has consistently urged the Declaration’s adoption as “a common standard of achievement for all nations and all peoples.” Proclamation No. 2999, 3 C.F.R. 46 (1953). Today, the Universal Declaration is embraced across the globe. Its provisions are regarded as foundational international norms. A core concept of international human rights law is the right to an effective remedy where a violation of rights is found. This right to an effective remedy is the linchpin supporting the protection of all other rights. Thus, the Universal Declaration refers generally to the right to an “effective remedy,” supra art. 8 (emphasis added), and the American Convention on Human Rights provides that “[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights. . . . The State Parties . . . ensure that the competent authorities shall enforce such remedies when granted.” Organization of American States, American Convention on Human Rights art. 25, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 131 [hereinafter American Convention] (emphasis added); see also Council of Europe, European Convention on Human Rights art. 13, Nov. 4, 1950, 213 U.N.Y.S. 232 (1955) [hereinafter European Convention] (providing that “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effec- tive remedy before a national authority” (emphasis added)); Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms art. 29, May 26, 1995, Council of Europe Doc. H (95) 7 rev. (stating that “[e]veryone whose rights and freedoms are violated shall be entitled to be effectively restored to his rights and freedoms” (emphasis added)); Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, 2007 Inter-Am. Ct. H.R. (ser. C) No. 170, ¶ 133 (Nov. 21, 2007) (interpreting Article 7 of Inter-American Convention to require that “it is not enough that . . . a remedy exists formally, it must be effective; that is, it must provide results or responses to the violations of rights established in the Convention”). In the case of prolonged arbitrary detention, the right to an “effective remedy” necessarily requires that the competent court be able to order release. Indeed, the right to release as an “effective remedy” for unjustified detention is made explicit in numerous international agreements. As already mentioned, supra Part I.A., the Covenant provides that for “[a]nyone who is deprived of his liberty by arrest or detention,” there is a right to judicial review “without delay” and a court shall “order . . . release if the detention is not lawful.” Covenant, supra, art. 9(4). The Covenant has been ratified by 165 countries. The American Declaration of the Rights and Duties of Man contains similar language. It provides that “[e]very individual . . . has the right to have the legality of his detention ascertained without delay . . . and the right to be tried without undue delay or, otherwise, to be released.” American Declaration of the Rights and Duties of Man, OAS Res. XXX, art. 25, Int’l Conf. of Am. States, 9th Conf., OAS Doc. OEA/Ser. L./V/II.23, doc. 21 rev. 6 (1948) (emphasis added). The American Convention, which the United States signed in 1977 but has ratified, also requires release as the remedy for unlawful detention: “Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.” American Convention, supra, art. 7(6); see Convention on the Rights of the Child art. 37(d), adopted Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) (protecting the right of every child “to challenge the legality of the deprivation of his or her liberty before a court” and to “a prompt decision on any such action”); European Convention, supra, art. 5(4) (“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”). It is important to note that an “effective remedy” for prolonged arbitrary detention cannot include transferring detainees to locations where they will be arbitrarily detained again or tortured. Under the Convention Against Torture, which United States and 145 other countries have ratified, “No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3(1), adopted Dec. 10, 1984, 108 Stat. 382, 463-64, 1465 U.N.T.S. 85. See also American Convention, supra, art. 22(8) (“In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.”); Convention Relating to the Status of Refugees art. 33(1), July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (“No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”). Domestic and international courts and international organizations have enforced the norm against prolonged arbitrary detention, including the right to release from unlawful detention. U.S. courts have invoked the norm as a prism through which to interpret domestic law. See, e.g., Rodriguez-Fernandez v. Wilkinson, 654 F.2d 1382, 1388 (10th Cir. 1981) (“It seems proper then to consider international law principles for notions of fairness as to propriety of holding aliens in detention. No principle of international law is more fundamental than the concept that human beings should be free from arbitrary imprisonment.”). The United Nations Human Rights Committee regularly gives effect to the international norm against prolonged arbitrary detention and the norm supporting the right to prompt release. In Shafiq v. Australia, the Committee held that under international law, “court review of the lawfulness of detention” had to “include the possibility of ordering release.” U.N. Hum. Rts. Comm., Communication No. 1324/2004, ¶ 7.4, U.N. Doc. CCPR/C/88/D/ 1324/2004 (2006); see also A v. Australia, U.N. Hum. Rts. Comm., Communication No. 560/1993, ¶ 9.5, U.N. Doc. CCPR/C/59/D/560/1993 (1997) (“[W]hat is decisive for the purposes of article 9 [of the ICCPR] . . . is that such review is, in its effects, real and not merely formal. . . . [T]he court [must] be empowered to order release, if the detention is incompatible with the requirements in article 9. . . .”). International courts have also held that detainees who are unlawfully held must be released. The European Court of Human Rights invoked the international norm supporting prompt release for detention that is “arbitrary.” Ilascu v. Moldova, 2004 VII Eur. Ct. H.R. 1134; see also Case of Assanidze v. Georgia, 2004-IV Eur. Ct. H.R. 659 (holding that because detention of applicant was “arbitrary,” state authorities were obliged to “secure the applicant’s release at the earliest possible date”). In 1980, the International Court of Justice invoked the international norm supporting the right to release to demand that Iran free several American hostages. United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 3, 42 (May 24, 1980) (“The Islamic Republic of Iran . . . must immediately terminate the unlawful detention of the . . . United States nationals now held hostage in Iran, and must immediately release each and every one and entrust them to the protecting Power.”). The United States excoriated Iran for failing to comply. See Houston A. Stokes, Broadening Executive Power in the Wake of Avena: An American Interpretation of Pacta Sunt Servanda, 63 Wash. & Lee L. Rev. 1219, 1231-32 (2006) (quoting President Carter’s reaction that “Iran was showing ‘contempt, not only for international law, but for the entire international structure for securing the peaceful resolution of differences among nations.’ ”).

International law firmly against indefinite detention authority

ASIL, 10

(American Society for International Law, “Intl Law in Brief,” 4/30, http://www.asil.org/files/ilib100430pdf.pdf)

The United States Department of Defense has issued a new Manual for Military Commissions. The 280-page document contains comprehensive procedural guidelines, special rules of evidence, and a penal code enumerating prosecutable offenses. Critics have emphasized the timing of the Manual—hours before the scheduled pre-trial proceedings in the case against Omar Khadr, a Canadian citizen currently held in Guantánamo. Amnesty International has issued a press release comparing the 2010 Manual to the one issued by the Bush administration in 2007, criticizing the continued insistence to “reserve[ ] the right to continue to detain individuals indefinitely even if they have been acquitted by a military commission.” Amnesty International argues that **indefinite detention “flies in the face of judgments of the International Court of Justice and authoritative legal conclusions stated by the UN Human Rights Committee.**

## 1NC Politics NB

ICJ delegation avoids politics

Alter, 2

(Poli Sci Prof-Northwestern, “Delegation to International Courts: Why, How, and Problems in Doing So,” Conference on Delegation to International Organizations, http://www.basilebox.com/cipa/Valspag/PENNELLA/materiali/cd\_globalizzazione/seminario\_8/indice\_documenti/2\_le\_organizzazioni\_internazionali/2\_1\_onu/19\_CAP2\_ALTER.PDF)

When the state’s goal is to play on uncertainty, pre-committing itself to ideals while the costs are unclear, courts may be an attractive way to commit. If states want to commit the rule, while hiding the costs of committing from domestic actors- it can be good to commit to something less than precise, and have a court apply it on a case-by-case basis. On the other hand, Martin and Goldstein argue that a hard legal obligation draws the attention of domestic actors who might oppose the agreement, making it perhaps more difficult to reach agreements that need to play on uncertainty. When the benefits are likely to be diffuse, but the costs narrow- **commitment may lock in broader benefits & shield government from criticism**. If opponents are likely to mobilize to squelch a deal, while the larger winners stay unmobilized, **locking in a deal by agreeing to a rule a court will then enforce achieves the government’s larger objective, and gives the government someone to blame when they lose.** When issues are technically complex, and thus less amenable to political negotiation and political control, legal systems may be attractive- Governments may **want to shield themselves** from having to master and negotiate minutia after minutia- turning the issue over to seemingly neutral technocrats (specialized courts) to resolve. Or, having courts fill in the blanks can seem more efficient than bringing together all parties to specify an agreement, especially if any such agreement would require formal state ratification. This will especially be attractive when the goal is mainly to create certainty so that business can invest—in which case the content of the rules may matter less than the fact that there are reliable rules. When governments want the agreement to signal to other actors their intent to comply, creating a court might help make their commitment credible. Majone talks about this mainly in terms of convincing business that government will not walk away from agreements when convenient. Moravcsik argues this is at play when democracy is young, and governments want to signal to their people their commitment to democracy. There is also a danger, however, that governments may sign on to binding justiciable agreements with no intent of adhering, using the signal to capture benefits when the commitment is not real. Indeed Oona Hathaway finds that treaty ratification in human rights is correlated with worse respect for human rights, though these treaties are generally not enforceable-- which may be why the commitment is made in the first place. When governments want to **remove certain issues from the political process, a legal system may be helpful**. Perhaps governments want to get rid of disputes that aggravate a bi-lateral relationship, or remove a contested issue from the domestic political debate.

## AT: Authority Key

The counterplan solves their ‘authority key’ warrants---it delegates to an international actor that can supersede executive power

Alter, 13

(Poli Sci-Northwestern, “The New Terrain of International Law: Courts, Politics, Rights Review,” Working Paper No. 13-001, March, http://www.bcics.northwestern.edu/documents/workingpapers/Buffett-13-001-Alter.pdf)

Delegating interpretive authority to ICs is politically significant because it introduces **an independent outside actor with the legal authority to say what international law means**. ICs become the trustees of the legal agreement and their legal interpretations are presumed to be more independent and disinterested compared to self-serving arguments put forward by litigating states. To understand this claim, we must think about what exists when there is no delegation to ICs. **Where there are no authoritative international adjudicators,** **each party can proffer their own interpretation to support their cause**. Although domestic judges may be called upon to interpret international rules, national judges often **defer to governments because the executive branch enjoys foreign affairs power,** because governments have more insight into what an international agreement was supposed to mean, and because diplomats often have a better sense how different legal interpretations might impact foreign relations. But delegation to ICs creates a **legal actor that resides outside of the control of litigating states** with the authority to say what international law means, to apply the law to concrete cases and thus to indicate what compliance with international law entails. Delegating interpretive authority to ICs does not supplant the role of domestic actors, and in most cases ICs will be working with domestic supporters of the rule of law. But it does **remove from governments and domestic judges the monopoly power to define what international law requires at home**. Being a trustee does not mean that international judges are entirely neutral or fully independent actors. The term comes from the common law concept of a trust where the trust’s creators specify the terms of the agreement and transfer oversight to a third party ‘trustee,’ who implements the agreement on behalf of the trust’s beneficiaries.8 The creator of the trust writes the trust agreement and selects the trustee to supervise the agreement, and in this respect, trustees are the agents of those who created the trust. The key conceptual point is that judges exercise their power on behalf of the trust’s beneficiaries. A single state cannot change the trust agreement (international law) nor can they remove an international judge from office. This is why simply creating an IC involves a sovereignty risk. Governments can appoint a political ally to an IC, and they can chose to disregard an IC ruling. But there will remain a concrete risk that international judicial rulings will shift the meaning of law in ways that are unexpected and politically irreversible, putting governments on the defensive. This risk is not just hypothetical. Constitutional review involves nullifying laws passed by legislative bodies, while administrative review involves rejecting decisions made by public actors. Thus, if judicial actors play their intended roles, judges will at times disagree with, rule against, or render interpretations that run counter to what the makers and the enforcers of the law might have wanted. In chapter four I take up the question of why states became increasingly willing to submit to international judicial oversight, and chapter on each role further considers why states might delegate a specific jurisdictional role to specific international courts. These arguments help make sense of the trends this book documents, but for me the reasons are secondary. What matters is that states have consented to IC authority, binding ever-changing governments to international judicial oversight of their adherence to international legal agreements and also empowering ICs to review the creation and application of law by international and national legislative and administrative actors. Once ICs exist, they become opportunity structures that litigants can activate to **promote greater respect for international law**. International judges may not be able to call upon centralized tools of coercion to enforce their rulings, but they can often call upon legal and political actors around the world to pressure governments to respect international law as defined by IC rulings.

## \*\*\*adv 1

## dpt

D

Multiple major conflicts disprove DPT

Rosato 11

Sebastian, Dept of Political Science at Notre Dame. “The Handbook on the Political Economy of War”, Google Books

Despite imposing these definitional restrictions, proponents of the democratic peace cannot exclude up to five major wars, a figure which, if confirmed, would invalidate the democratic peace by their own admission (Ray 1995, p. 27). The first is the War of 1812 between Britain and the United States. Ray argues that it does not contradict the claim because Britain does not meet his suffrage requirement. Yet this does not make Britain any less democratic than the United States at the time where less than half the adult population was eligible to vote. In fact, as Layne (2001, p. 801) notes, "the United States was not appreciably more democratic than un re formed Britain." This poses a problem for the democratic peace; if the United States was a democracy, and Ray believes it was, then Britain was also a democracy and the War of 1812 was an inter-democratic war. The second case is the American Civil War. Democratic peace theorists believe the United States was a democracy in 1861, but exclude the case on the grounds that it was a civil rather than interstate war (Russett 1993, pp. 16-17). However, a plausible argument can be made that the United States was not a state but a union of states, and lhat this was therefore a war between states rather than within one. Note, for example, that the term "United States" was plural rather than singular at the time and the conflict was known as the "War Between the States."7 This being the case, the Civil War also contradicts the claim. The Spanish-American and Boer wars constitute two further exceptions to the rule. Ray excludes the former because half of the members of Spain's upper house held their positions through hereditary succession or royal appointment. Yet this made Spain little different to Britain, which he classifies as a democracy at the time, thereby leading to the conclusion that the Spanish-American War was a war between democracies. Similarly, it is hard to accept his claim that the Orange Free State was not a democracy during the Boer War because black Africans were not allowed to vote when he is content to classify the United States as a democracy in the second half of the nineteenth century (Ray 1993, pp. 265, 267; Layne 2001. p. 802). In short, defenders of the democratic peace can only rescue their core claim through the selective application of highly restrictive criteria. Perhaps the most important exception is World War I, which, by virtue of the fact that Germany fought against Britain, France, Italy, Belgium and the United States, would count as five instances of war between liberal states in most analyses of the democratic peace.9 As Ido Oren (1995, pp. 178-9) has shown. Germany was widely considered lo be a liberal slate prior to World War I: "Germany was a member of a select group of the most politically advanced countries, far more advanced than some of the nations that are currently coded as having been 'liberal\* during that period." In fact, Germany was consistently placed toward the top of that group, "either as second only to the United States ... or as positioned below England and above France." Moreover, Doyle\*s assertion that the case ought to be excluded because Germany was liberal domestically, but not in foreign affairs, does not stand up to scrutiny. As Layne (1994, p. 42) points out, foreign policy was "insulated from parliamentary control" in both France and Britain, two purportedly liberal states (see also Mearsheimer 1990, p. 51, fn. 77; Layne 2001, pp. 803 807). Thus it is difficult to classify Germany as non-liberal and World War I constitutes an important exception to the finding.

## me

Empirics prove

Kevin Drum, Staff Writer for the Washington Monthly, 9/9/’7

(<http://www.washingtonmonthly.com/archives/individual/2007_09/012029.php>)

Having admitted, however, that the odds of a military success in Iraq are almost impossibly long, Chaos Hawks nonetheless insist that the U.S. military needs to stay in Iraq for the foreseeable future. Why? Because if we leave the entire Middle East will become a bloodbath. Sunni and Shiite will engage in mutual genocide, oil fields will go up in flames, fundamentalist parties will take over, and al-Qaeda will have a safe haven bigger than the entire continent of Europe. Needless to say, this is nonsense. Israel has fought war after war in the Middle East. Result: no regional conflagration. Iran and Iraq fought one of the bloodiest wars of the second half the 20th century. Result: no regional conflagration. The Soviets fought in Afghanistan and then withdrew. No regional conflagration. The U.S. fought the Gulf War and then left. No regional conflagration. Algeria fought an internal civil war for a decade. No regional conflagration.

## disease

New coop solves

Lena H. Sun 2-20, 2014, The Washington Post, “U.S. launches new global initiative to prevent infectious disease threats; Effort targets 30 countries, with a focus on lab security, immunization and emergency response centers.” Factiva

Faced with what they describe as a perfect storm of converging threats from infectious-disease epidemics, U.S. officials launched **a global effort** Thursday with more than two dozen countries and international organizations **to prevent deadly outbreaks from spreading**.

**The goal is to prevent, detect and respond to infectious-disease threats where they start**. That's more effective and less costly than treating sick people after diseases spread. The new initiative is ­intended to bolster security at ­infectious-disease laboratories, strengthen immunization programs and set up emergency ­response centers that can react to outbreaks within two hours.

Despite advances in medicine and technology, Americans are at greater risk than ever from new infectious diseases, drug-resistant infections and potential bioterrorism organisms, said Thomas Frieden, director of the Centers for Disease Control and Prevention, which is spearheading the initiative.

On Thursday — even though federal offices in Washington were closed because of a major snowstorm — Health and Human Services Secretary Kathleen Sebelius welcomed officials to a meeting held at department headquarters to launch the effort. "Global health security is a shared responsibility. **No one country can achieve it alone**," she said. "A threat anywhere is indeed a threat everywhere."

Lisa Monaco, assistant to the president for homeland security and counterterrorism, said biological threats can "emerge quickly, travel quickly and take lives." She cited the H7N9 bird flu virus, a virus first reported in China last year, and Middle East respiratory syndrome (MERS), first reported in Saudi Arabia in 2012.

Diseases that until recently weren't found in the United States have become widespread, including mosquito-borne illnesses related to West Nile ­virus. There has also been a resurgence of diseases such as drug-resistant tuberculosis, a particularly dangerous form of the infectious lung disease.

Reports of TB are not uncommon in the Washington area and other major metropolitan areas, which typically are home to large immigrant populations and professionals who travel overseas frequently. Recently, there was a tuberculosis case at a Montgomery County high school , and three cases were reported at a Fairfax County high school in June.

In recent weeks, another mosquito-borne virus common in Africa and Asia has spread quickly through the eastern Caribbean, appearing for the first time in the Western Hemisphere. Chikun­gunya fever, which is similar to dengue, was reported in December on the French side of St. Martin and has spread to seven other jurisdictions, including Martinique, Guadeloupe and the British Virgin Islands.

International regulations require nations to report outbreaks quickly to the World Health Organization, but **most countries have not complied**.

"We hope this will be the shot in the arm**, energizing the global health security agenda**," Andrew Weber, assistant secretary of defense for nuclear, chemical and biological defense programs, said in conference call with reporters Wednesday.

The WHO, the U.N. Food and Agriculture Organization, and the World Organization for Animal Health are also participating in the effort.

This year, the CDC and the Defense Department are committing $40 million to work with 10 countries, including Uganda and Vietnam. The CDC recently completed pilot programs in those countries to improve diagnostic testing and transportation of potentially infectious samples.

Uganda has battled the deadly Ebola virus, cholera and multidrug-resistant TB. Vietnam has experienced outbreaks of SARS (severe acute respiratory syndrome) and the H5N1 bird flu strain. The SARS pandemic of 2003, which began in China, killed nearly 800 people in more than 30 countries, and its cost was estimated at $30 billion after just a few months.

Before the CDC pilot, Uganda had programs to diagnose children born to HIV-positive mothers. But they operated in only one part of the country, and they were aimed at only the one disease. Now, Uganda has a network operating across the country to test patients for a range of pathogens and transport samples by motorcycle to provincial capitals, where the samples are sent by overnight mail to state-of-the-art labs in Kampala for testing, Frieden said.

Test results are then delivered by special printers that operate on mobile networks similar to those used by cellphones. The printers can transmit results to officials in remote areas of the country within days, instead of the months it used to take.

CDC officials also created a dipstick — similar to those used in pregnancy kits — so local health officials can quickly test whether someone has pneumonic plague, the most serious form of the illness and the only form that can be spread from person to person.

As a result, not only can health officials speed up testing, but they also can avoid having to grow tissue samples in petri dishes, which can produce "billions of plague bacteria **that could have the potential to become a biological weapon**," Frieden said.

Officials said the Defense Department is likely to be involved in improving the physical security of laboratories to prevent specimens of potentially lethal pathogens **from being stolen or released inadvertently.**

Among the other countries that U.S. officials hope to work with this year are India, Kenya, Tanzania and Ethi­o­pia, according to health experts familiar with the initiative.

Next year, the Obama administration is proposing to spend $45 million to expand the program to include more countries; within five years, officials hope to have 30 countries participating.

U.S. government agencies operate many programs related to infectious diseases. But **the new effort is the most comprehensive so far, and experts say it will help call attention to disease threats around the world.**

Thursday's meeting drew participants from 26 countries, including China, India, Russia, Saudi Arabia, South Africa, Uganda and Vietnam. Notably absent was Pakistan, where 83 polio cases were reported last year, more than in either Afghanistan or Nigeria, the other countries where polio is endemic.

Health workers and officials have tried for years to persuade conservative Muslims to accept vaccination. Violence against polio workers flared after revelations in 2011 that the CIA had sponsored an immunization campaign to gain information about Osama bin Laden before U.S. forces killed him in Pakistan.

# 1nr

## Canada

#### No enviro impact

Brook 13

Barry Brook, Professor at the University of Adelaide, leading environmental scientist, holding the Sir Hubert Wilkins Chair of Climate Change at the School of Earth and Environmental Sciences, and is also Director of Climate Science at the University of Adelaide’s Environment Institute, author of 3 books and over 250 scholarly articles, Corey Bradshaw is an Associate Professor at the University of Adelaide and a joint appointee at the South Australian Research and Development Institute, Brave New Climate, March 4, 2013, "Worrying about global tipping points distracts from real planetary threats", http://bravenewclimate.com/2013/03/04/ecological-tipping-points/

Barry Brook

We argue that at the global-scale, ecological “tipping points” and threshold-like “planetary boundaries” are improbable. Instead, shifts in the Earth’s biosphere follow a gradual, smooth pattern. This means that it might be impossible to define scientifically specific, critical levels of biodiversity loss or land-use change. This has important consequences for both science and policy.

Humans are causing changes in ecosystems across Earth to such a degree that there is now broad agreement that we live in an epoch of our own making: the Anthropocene. But the question of just how these changes will play out — and especially whether we might be approaching a planetary tipping point with abrupt, global-scale consequences — has remained unsettled.

A tipping point occurs when an ecosystem attribute, such as species abundance or carbon sequestration, responds abruptly and possibly irreversibly to a human pressure, such as land-use or climate change. Many local- and regional-level ecosystems, such as lakes,forests and grasslands, behave this way. Recently however, there have been several efforts to define ecological tipping points at the global scale.

At a local scale, there are definitely warning signs that an ecosystem is about to “tip”. For the terrestrial biosphere, tipping points might be expected if ecosystems across Earth respond in similar ways to human pressures and these pressures are uniform, or if there are strong connections between continents that allow for rapid diffusion of impacts across the planet.

These criteria are, however, unlikely to be met in the real world.

First, ecosystems on different continents are not strongly connected. Organisms are limited in their movement by oceans and mountain ranges, as well as by climatic factors, and while ecosystem change in one region can affect the global circulation of, for example, greenhouse gases, this signal is likely to be weak in comparison with inputs from fossil fuel combustion and deforestation.

Second, the responses of ecosystems to human pressures like climate change or land-use change depend on local circumstances and will therefore differ between locations. From a planetary perspective, this diversity in ecosystem responses creates an essentially gradual pattern of change, without any identifiable tipping points.

This puts into question attempts to define critical levels of land-use change or biodiversity loss scientifically.

Why does this matter? Well, one concern we have is that an undue focus on planetary tipping points may distract from the vast ecological transformations that have already occurred.

After all, as much as four-fifths of the biosphere is today characterised by ecosystems that locally, over the span of centuries and millennia, have undergone human-driven regime shifts of one or more kinds.

Recognising this reality and seeking appropriate conservation efforts at local and regional levels might be a more fruitful way forward for ecology and global change science.

Corey Bradshaw

(see also notes published here on ConservationBytes.com)

Let’s not get too distracted by the title of the this article – Does the terrestrial biosphere have planetary tipping points? – or the potential for a false controversy. It’s important to be clear that the planet is indeed ill, and it’s largely due to us. Species are going extinct faster than they would have otherwise. The planet’s climate system is being severely disrupted; so is the carbon cycle. Ecosystem services are on the decline.

But – and it’s a big “but” – we have to be wary of claiming the end of the world as we know it, or people will shut down and continue blindly with their growth and consumption obsession. We as scientists also have to be extremely careful not to pull concepts and numbers out of thin air without empirical support.

Specifically, I’m referring to the latest “craze” in environmental science writing – the idea of “planetary tipping points” and the related “planetary boundaries”.

It’s really the stuff of Hollywood disaster blockbusters – the world suddenly shifts into a new “state” where some major aspect of how the world functions does an immediate about-face.

Don’t get me wrong: there are plenty of localised examples of such tipping points, often characterised by something we call “hysteresis”. Brook defines hysterisis as:

a situation where the current state of an ecosystem is dependent not only on its environment but also on its history, with the return path to the original state being very different from the original development that led to the altered state. Also, at some range of the driver, there can exist two or more alternative states

and “tipping point” as:

the critical point at which strong nonlinearities appear in the relationship between ecosystem attributes and drivers; once a tipping point threshold is crossed, the change to a new state is typically rapid and might be irreversible or exhibit hysteresis.

Some of these examples include state shifts that have happened (or mostly likely will) to the cryosphere, ocean thermohaline circulation, atmospheric circulation, and marine ecosystems, and there are many other fine-scale examples of ecological systems shifting to new (apparently) stable states.

However, claiming that we are approaching a major planetary boundary for our ecosystems (including human society), where we witness such transitions simultaneously across the globe, is simply not upheld by evidence.

Regional tipping points are unlikely to translate into planet-wide state shifts. The main reason is that our ecosystems aren’t that connected at global scales.

The paper provides a framework against which one can test the existence or probability of a planetary tipping point for any particular ecosystem function or state. To date, the application of the idea has floundered because of a lack of specified criteria that would allow the terrestrial biosphere to “tip”. From a more sociological viewpoint, the claim of imminent shift to some worse state also risks alienating people from addressing the real problems (foxes), or as Brook and colleagues summarise:

framing global change in the dichotomous terms implied by the notion of a global tipping point could lead to complacency on the “safe” side of the point and fatalism about catastrophic or irrevocable effects on the other.

In other words, let’s be empirical about these sorts of politically charged statements instead of crying “Wolf!” while the hordes of foxes steal most of the flock.

## 1NR Impact

#### Turns econ and china war causes nuclear meltdown and extinction

Guterl, executive editor – Scientific American, 11/28/’12

(Fred, “Armageddon 2.0,” Bulletin of the Atomic Scientists)

The world lived for half a century with the constant specter of nuclear war and its potentially devastating consequences. The end of the Cold War took the potency out of this Armageddon scenario, yet the existential dangers have only multiplied.Today the technologies that pose some of the biggest problems are not so much military as commercial. They come from biology, energy production, and the information sciences -- and are the very technologies that have fueled our prodigious growth as a species. They are far more seductive than nuclear weapons, and more difficult to extricate ourselves from. The technologies we worry about today form the basis of our global civilization and are essential to our survival.The mistake many of us make about the darker aspects of our high-tech civilization is in thinking that we have plenty of time to address them. We may, if we're lucky. But it's more likely that we have less time than we think. There may be a limited window of opportunity for preventing catastrophes such as pandemics, runaway climate change, and cyber attacks on national power grids. Emerging diseases. The influenza pandemic of 2009 is a case in point. Because of rising prosperity and travel, the world has grown more conducive to a destructive flu virus in recent years, many public health officials believe. Most people probably remember 2009 as a time when health officials overreacted. But in truth, the 2009 virus came from nowhere, and by the time it reached the radar screens of health officials, it was already well on its way to spreading far and wide. "H1N1 caught us all with our pants down," says flu expert Robert G. Webster of St. Jude Children's Research Hospital in Memphis, Tennessee. Before it became apparent that the virus was a mild one, health officials must have felt as if they were staring into the abyss. If the virus had been as deadly as, say, the 1918 flu virus or some more recent strains of bird flu, the result would have rivaled what the planners of the 1950s expected from a nuclear war. It would have been a "total disaster," Webster says. "You wouldn't get the gasoline for your car, you wouldn't get the electricity for your power, you wouldn't get the medicines you need. Society as we know it would fall apart." Climate change. Climate is another potentially urgent risk. It's easy to think about greenhouse gases as a long-term problem, but the current rate of change in the Arctic has alarmed more and more scientists in recent years. Tim Lenton, a climate scientist at the University of Exeter in England, has looked at climate from the standpoint of tipping points -- sudden changes that are not reflected in current climate models. We may already have reached a tipping point -- a transition to a new state in which the Arctic is ice-free during the summer months. Perhaps the most alarming of Lenton's tipping points is the Indian summer monsoon. Smoke from household fires, and soot from automobiles and buses in crowded cities, rises into the atmosphere and drifts out over the Indian Ocean, changing the atmospheric dynamics upon which the monsoon depends -- keeping much of the sun's energy from reaching the surface, and lessening the power of storms. At the same time, the buildup of greenhouse gases -- emitted mainly from developed countries in the northern hemisphere -- has a very different effect on the Indian summer monsoon: It makes it stronger. These two opposite influences make the fate of the monsoon difficult to predict and subject to instability. A small influence -- a bit more carbon dioxide in the atmosphere, and a bit more brown haze -- could have an outsize effect. The Indian monsoon, Lenton believes, could be teetering on a knife's edge, ready to change abruptly in ways that are hard to predict. What happens then? More than a billion people depend on the monsoon's rains. Other tipping points may be in play, says Lenton. The West African monsoon is potentially near a tipping point. So are Greenland's glaciers, which hold enough water to raise sea levels by more than 20 feet; and the West Antarctic Ice Sheet, which has enough ice to raise sea levels by at least 10 feet. Regional tipping points could hasten the ill effects of climate change more quickly than currently projected by the Intergovernmental Panel on Climate Change. Computer hacking. The computer industry has already made it possible for computers to handle a variety of tasks without human intervention. Autonomous computers, using techniques formerly known as artificial intelligence, have begun to exert control in virtually every sphere of our lives. Cars, for instance, can now take action to avoid collisions. To do this, a car has to make decisions: When does it take control? How much braking power should be applied, and to which wheels? And when should the car allow its reflex-challenged driver to regain control? Cars that drive themselves, currently being field tested, could hit dealer showrooms in a few years. Autonomous computers can make our lives easier and safer, but they can also make them more dangerous. A case in point is Stuxnet, the computer worm designed by the US and Israel to attack Iran's nuclear fuel program. It is a watershed in the brief history of malware -- the Jason Bourne of computer code, designed for maximum autonomy and effectiveness. Stuxnet's creators gave their program the best training possible: they stocked it with detailed technical knowledge that would come in handy for whatever situation Stuxnet could conceivably encounter. Although the software included rendezvous procedures and communication codes for reporting back to headquarters, Stuxnet was built to survive and carry out its mission even if it found itself cut off. The uranium centrifuges that Stuxnet attacked are very similar in principle to the generators that power the US electrical grid. Both are monitored and controlled by programmable-logic computer chips. Stuxnet cleverly caused the uranium centrifuges to throw themselves off-balance, inflicting enough damage to set the Iranian nuclear industry back by 18 months or more. A similar piece of malware installed on the computers that control the generators at the base of the Grand Coulee Dam would likewise cause them to shake, rattle, and roll -- and eventually explode. If Stuxnet-like malware were to insinuate itself into a few hundred power generators in the United States and attack them all at once, the damage would be enough to cause blackouts on the East and West Coasts. With such widespread destruction, it could take many months to restore power to the grid. It seems incredible that this should be so, but the worldwide capacity to manufacture generator parts is limited. Generators generally last 30 years, sometimes 50, so normally there's little need for replacements. The main demand for generators is in China, India, and other parts of rapidly developing Asia. That's where the manufacturers are -- not in the United States. Even if the United States, in crisis mode, put full diplomatic pressure on supplier nations -- or launched a military invasion to take over manufacturing facilities -- the capacity to ramp up production would be severely limited. Worldwide production currently amounts to only a few hundred generators per year. The consequences of going without power for months, across a large swath of the United States, would be devastating. Backup electrical generators in hospitals and other vulnerable facilities would have to rely on fuel that would be in high demand. Diabetics would go without their insulin; heart attack victims would not have their defibrillators; and sick people would have no place to go. Businesses would run out of inventory and extra capacity. Grocery stores would run out of food, and deliveries of all sorts would virtually cease (no gasoline for trucks and airplanes, trains would be down). As we saw with the blackouts caused by Hurricane Sandy, gas stations couldn't pump gas from their tanks, and fuel-carrying trucks wouldn't be able to fill up at refueling stations. Without power, the economy would virtually cease, and if power failed over a large enough portion of the country, simply trucking in supplies from elsewhere would not be adequate to cover the needs of hundreds of millions of people. People would start to die by the thousands, then by the tens of thousands, and eventually the millions. The loss of the power grid would put nuclear plants on backup, but how many of those systems would fail, causing meltdowns, as we saw at Fukushima? The loss in human life would quickly reach, and perhaps exceed, the worst of the Cold War nuclear-exchange scenarios. After eight to 10 days, about 72 percent of all economic activity, as measured by GDP, would shut down, according to an analysis by Scott Borg, a cybersecurity expert.

## 2nc key to nsa

Reforms make NSA effective and legitimate

Ken Dilanian, LA Times, 3/25/14, Obama's NSA compromise plan wins initial praise, www.latimes.com/nation/la-na-nsa-phone-records-20140326,0,6343193.story#axzz2x5mjhHdG

President Obama's new plan for the National Security Agency would significantly curb its authority, ending its vast collection of Americans' telephone records, but at the same time give the spy agency access to millions of cellphone records it currently does not reach. The compromise, which would require Congress' approval, won praise Tuesday from prominent lawmakers, including leading defenders and critics of the agency. But it faces a lengthy legislative process during which the agency will continue to collect and store the records of millions of U.S. telephone calls. At a news conference in The Hague, where he took part in a world meeting on nuclear security, Obama said the Justice Department and intelligence agencies had given him "an option that I think is workable" and that "addresses the two core concerns that people have" about the most controversial surveillance program revealed by former NSA contractor Edward Snowden. The first concern, Obama said, was that the government not control a vast archive of U.S. telephone call data. Currently, the NSA collects records of virtually all land-line telephone calls in the U.S. and stores them for five years. Under the administration proposal, the government would no longer keep that archive. Instead, all telephone companies, including cellphone providers, would be required to keep call records for 18 months, the current industry standard. The second concern, Obama said, was that the NSA be allowed to search only those phone records under a specific court order. Previously, a blanket court order required telephone companies to turn call records over to the NSA, but no judge scrutinized analysts' decisions about which numbers to look at. In February, the Foreign Intelligence Surveillance Court approved Obama's request to require judicial approval for each search. The new proposal would write that requirement into law, with an exception for emergencies. U.S. intelligence agencies have to "win back the trust, not just of governments but more importantly of ordinary citizens" around the world, Obama said. Doing so is "not going to happen overnight because I think that there's a tendency to be skeptical of government and to be skeptical, in particular, of U.S. intelligence services," he added. The new plan should help make Americans more comfortable with the surveillance program, he said. Obama repeated his belief that "some of the reporting here in Europe, as well as the United States, frankly, has been pretty sensationalized," and he said that U.S. intelligence analysts had exercised their authority judiciously. But such power could be abused in the future, he said. "The fears about our privacy in this age of the Internet and big data are justified," he said. The NSA does not obtain the contents of communications under the telephone program. But the ability to map a person's communications with times, dates and the numbers called can provide a window into someone's activities and connections. Snowden's disclosures to journalists made the existence of the program public in June. It was the first of a stream of stories that have revealed some of the government's most sensitive electronic intelligence efforts. In a statement through his lawyers at the American Civil Liberties Union, Snowden, who has taken refuge in Russia, called Obama's proposal a "turning point." "It marks the beginning of a new effort to reclaim our rights from the NSA and restore the public's seat at the table of government," his statement said. The NSA director, Gen. Keith Alexander, also embraced the proposal. "I think it's the right thing to do, and I think it addresses our counter-terrorism operational mission requirements," he said in an interview. Alexander, who is retiring Friday, has been lobbying members of Congress to adopt the plan. NSA officials consider the compromise the best outcome the agency could hope for, particularly since its authority to collect phone records will expire in 18 months unless Congress reauthorizes it. Congressional critics of the spy agency praised some aspects of the proposal, but urged the NSA to immediately halt further collection of telephone records until Congress acts. "This is the start of the end of dragnet surveillance in America," said Sen. Ron Wyden (D-Ore.), chairman of the Senate Finance Committee. Joined by Sens. Mark Udall (D-Colo.) and Rand Paul (R-Ky.) in an unusual bipartisan alliance, Wyden has pressured the White House over the NSA's activities. "They can stop immediately," Paul said. "There's nothing forcing them to keep collecting the data." Administration officials, however, say they plan to continue the collection for at least three more months while Congress debates. They have not ruled out continuing longer if Congress does not act. Two leading NSA supporters, House Intelligence Committee Chairman Mike Rogers (R-Mich.) and the committee's ranking Democrat, Rep. C.A. Dutch Ruppersberger of Maryland, unveiled their own proposal Tuesday that tracks the White House plan in most respects, with a major exception: It would not require court approval each time phone records are searched. The parts of the administration proposal dealing with cellphone companies would provide significant benefits for the NSA, Alexander acknowledged in the interview. Although the agency's archive includes hundreds of millions of telephone records, U.S. officials disclosed last month that it did not reach a large segment of cellphone calls. As a result, the NSA may collect only about 30% of call data in the country. The administration's new plan would require cellphone providers to keep records much as land-line companies do, significantly expanding the NSA's access to information. "This could actually make the program more efficient and more effective [and] at the same time more protective of civil liberties," said Rep. Adam B. Schiff (D-Burbank), who proposed legislation in January similar to the White House plan.

Reforms solves surveillance credibility

David Weigel, Slate, 3/25/14, Turning Off the Vacuum Cleaner, www.slate.com/articles/news\_and\_politics/politics/2014/03/nsa\_bulk\_metadata\_collection\_rand\_paul\_ron\_wyden\_support\_obama\_s\_plan\_to.html

If it was a “turning point,” as Snowden suggested, it was one that the administration and its critics both needed. The congressional and civic outcry against the NSA started and basically ended with the revelations of domestic snooping. That wasn’t where the Snowden revelations ended. Day after week after month, newspapers were using the Snowden documents to detail American spying in foreign countries. This was costing the American tech industry billions of dollars, maybe as much as $180 billion. Rogers and Ruppersberger, and the administration, wanted to restore American credibility. Domestic surveillance reform was the only attainable idea, even if it barely addressed most of Snowden’s leaks. The reform, said Ruppersberger, would “set an example,” while “at least a year’s” worth of Snowden revelations continued to trickle out. The world outside would see that America was doing something about surveillance, and their own governments weren’t. Hey, it could work. “The French, just recently, passed a measure so that you don’t even need a court order to get personal data stored on their systems in France,” said Rogers. “Espionage is a French word, after all.” That line got a couple of laughs, but Rogers meant it. “We should get over the shock and awe of all of this and have an honest dialogue about what is exactly happening,” he said. “Europeans spy on the United States of America, sorry, every single day.” Multiple times, when reporters asked Rogers why Congress wasn’t reforming any of the programs that worried foreigners, the congressman accused the press of overhyping stories and possibly being suckered by bad intelligence. Snowden, who Rogers only referred to as “the former NSA contractor,” had created “confusion on legal programs he had no understanding of,” and then fallen into Russia’s grip. “There’s a lot of intelligence officials today who have to go back and, [with] every new revelation, knowing he’s under the influence of Russian intelligence, scrutinize it 10 times more than they did,” said Rogers. “A lot of people take it as gospel. I assure you, it’s not.” “I would love to have Russia’s Snowden come over here and give us all the data he found,” said Ruppersberger. These were the congressmen who were now backing the end of bulk metadata collection. The civil libertarians could accept that, because they knew what to go after next. Paul, who had just returned from a well-received and widely-covered anti-spying speech in Berkeley, Calif., openly derided the arguments he expected to hear next. “They will say, we have these privacy controls that da-da-da-da,” said Paul, replacing the intelligence community’s jargon with nonsense syllables. “We’re going to do da-da-da-da. But the records are not protected by the Fourth Amendment. This is still a big question. I think it will still have to be decided by the Supreme Court.” But that sets up a sort of détente. The civil libertarian campaign would continue. The campaigners would give their blessing to incremental reform. The skeptics would go along with the reform, because they know how quickly the conversation can shift.

Congressional action key to avoid NSA lawsuits that kill surveillance authority

Steven Nelson, US News and World Report, 3/27/14, Obama's NSA Reform Package May Hamstring Privacy Lawsuits, www.usnews.com/news/articles/2014/03/27/obamas-nsa-reform-package-may-hamstring-privacy-lawsuits

If Obama and Congress do agree to permanently proscribe mass phone record collection, that may kill lawsuits seeking a finding that the program is unconstitutional and updated Supreme Court guidance on government surveillance, three legal experts on mootness say.

“The court can only enjoin programs that will continue into the future, not programs that existed in the past,” says Douglas Laycock, a professor at the University of Virginia Law School.

There are six major lawsuits challenging the program. Each of the lawsuits seek declarations that the program is unconstitutional and permanent injunctions ending it.

Conservative legal activist Larry Klayman, unlike other challengers, seeks damages from Verizon and U.S. officials – which may keep his two cases alive, experts say. Cases brought by the Electronic Frontier Foundation, the American Civil Liberties Union and Sen. Rand Paul, R-Ky., do not seek damages.

“If the change comes in the form of a formal statute, rather than simply an executive branch discretionary decision, and there is no issue of past damages … I would put my money on the judiciary's finding the issue moot,” says Martin Redish, a professor at the Northwestern University School of Law.

## AT: Indefinite Extension

Can’t indefinitely extend (Obama just extended the metadata program—that’s distinct from authority for the program which expires) and doesn’t solve

Ken Dilanian, LA Times, 3/26/14, Obama plan for NSA is widely praised, Lexis

Alexander, who is retiring Friday, has been lobbying members of Congress to adopt the plan. NSA officials consider the compromise the best outcome the agency could hope for, particularly since its authority to collect phone records will expire in 18 months unless Congress reauthorizes it. Congressional critics of the spy agency praised some aspects of the proposal, but urged the NSA to immediately halt further collection of telephone records until Congress acts. "This is the start of the end of dragnet surveillance in America," said Sen. Ron Wyden (D-Ore.), chairman of the Senate Finance Committee. Joined by Sens. Mark Udall (D-Colo.) and Rand Paul (R-Ky.) in an unusual bipartisan alliance, Wyden has pressured the White House over the NSA's activities. "They can stop immediately," Paul said. "There's nothing forcing them to keep collecting the data." Administration officials, however, say they plan to continue the collection for at least three more months while Congress debates. They have not ruled out continuing longer if Congress does not act. Two leading NSA supporters, House Intelligence Committee Chairman Mike Rogers (R-Mich.) and the committee's ranking Democrat, Rep. C.A. Dutch Ruppersberger of Maryland, unveiled their own proposal Tuesday that tracks the White House plan in most respects, with a major exception: It would not require court approval each time phone records are searched. The parts of the administration proposal dealing with cellphone companies would provide significant benefits for the NSA, Alexander acknowledged in the interview. Although the agency's archive includes hundreds of millions of telephone records, U.S. officials disclosed last month that it did not reach a large segment of cellphone calls. As a result, the NSA may collect only about 30% of call data in the country. The administration's new plan would require cellphone providers to keep records much as land-line companies do, significantly expanding the NSA's access to information. "This could actually make the program more efficient and more effective [and] at the same time more protective of civil liberties," said Rep. Adam B. Schiff (D-Burbank), who proposed legislation in January similar to the White House plan. White House officials have been laying the groundwork with phone service providers, which would be required to standardize their records and make them available on a continuously updated basis. The NSA would be allowed to search up to two "hops" of phone numbers connected to a number linked to a terrorist, meaning all the numbers connected to the suspect number and all the numbers connected to that first set of connections. The once-secret program, authorized by Section 215 of the Patriot Act, is used by the NSA to analyze links between callers in an effort to identify hidden terrorist plots in the United States. Intelligence officials have said it played a role in thwarting at least a dozen terrorist plots.

#### Regardless of dealing with 215 authority, this specific reform package has to pass to fix NSA program flaws

Benjamin Wittes, 3/27/14, President Obama’s Metadata Proposal: A Win for Everyone?, [www.lawfareblog.com/2014/03/president-obamas-metadata-proposal-a-win-for-everyone/](http://www.lawfareblog.com/2014/03/president-obamas-metadata-proposal-a-win-for-everyone/)

The ACLU is declaring President Obama’s announcement today of his proposal for reform of the 215 program “a major step in the right direction and a victory for privacy.” Jameel Jaffer, writing over at Just Security, raises questions about the proposal but says flatly:

This is a milestone. The administration’s proposal is an acknowledgement that a program that was endorsed in secret by all three branches of government, and that was in place for about a decade, has not survived public scrutiny. It’s also an acknowledgement that the government’s legitimate intelligence interests can be accommodated without placing the entire country under surveillance.

Yet at the same time, NSA is also behind the proposal. Ken Dilanian of the Los Angeles Times reports that:

Gen. Keith Alexander, the NSA’s director, who is retiring, has been lobbying members of Congress in favor of the compromise. He believes it is the best outcome the NSA could hope for with the program, the official said. The NSA’s collection authority currently will expire in 18 months unless Congress reauthorizes the program.

Indeed, the proposal has a huge benefit in it for NSA, one that stands actually to increase its operational coverage of telephony metadata. As Dilanian rightly notes, NSA would actually “gain access to cellphone information it currently lacks” if the administration’s proposal were adopted.

The dirty little secret about the comprehensive metadata collection program is that it isn’t actually comprehensive—not even all that close. This dirty little secret, now that I mention it, also isn’t all that secret. Back in February, the New York Times reported:

 The National Security Agency’s once-secret program that is collecting bulk records of Americans’ domestic phone calls is taking in a relatively small portion of the total volume of such calls each day, officials familiar with the program said on Friday.

 While the agency is collecting a large amount of landline phone data, it has struggled to take in cellphone data, which has undergone explosive growth in recent years and presents additional technological hurdles, the officials said.

According to the Washington Post, the actual take was less than a third of calls.

As Dilanian points out, the administration’s proposal would address this rather large operational gap. The government would collect no telephony metadata itself, and it would lose the five-year storage of metadata that it gets to do now under 215, relying instead on the phone companies to store their own metadata for much shorter periods of time. But the telephone companies would be under an obligation to respond quickly to court-approved queries for metadata they have. And they would be obligated to store it in standardized forms that would be interoperable across companies. So NSA would have a shorter period of metadata but far more comprehensive coverage within that period.

This is actually a very good deal for the agency. It’s not simply, as Dilanian says, the best the agency can hope to get under present political conditions. At least some people believe it would provide the agency with a significant net operational gain over the program as it exists now.

And that raises a very interesting question: Is this situation one in which civil liberties interests and operational interests largely coincide? Put another way, is there a bill here that both Jameel Jaffer and General Alexander would rightly and reasonably regard as a win?

Whether there’s a deal to be done depends to a great degree on details. The administration’s proposal still lacks legislative language, and things may get far more contentious when meat starts appearing on what are now bare bones. But I, for one, am intrigued by the possibility that this may not be a fight anyone has to lose. If that turns out to be the case, President Obama will deserve huge credit for finding a policy space that enhances intelligence collection by protecting civil liberties more robustly.

## Link

#### Authority fights suck of Congressional focus – means Obama can’t get NSA done – that’s Grant – dropped the theory of it

Prez authority is key

Alexander Ryland, United Kingdom Government Administration Aberdeenshire Council, Project Assistant, 7/9/2012, http://www.e-ir.info/2012/07/09/executive-legislative-conflict-over-the-war-powers-resolution/

The contradictions in congressional challenges to the president’s authority under the WPR show definite decline in power evidenced which enables the president to enact policy decisions without effective oversight from the legislature. While presidential grand strategy remains broadly similar through both case studies, Congress appear unable to maintain a consistent approach to foreign policy. Instead it is constrained by a combination of partisan politicking and other domestic pressures beyond the executive-legislative bargaining which the resolution seeks to encourage. Whether through campaign financing, authoring legislation, or bargaining over strike action, politicians can become embroiled in complex relationships with lobbyists and special interests undermining the effectiveness of the legislative agenda of Congress. Especially in election years, intra-governmental conflict can become heated. The relationship between the president and the opposition party in Congress created the inflammation surrounding the legality of the Libyan intervention and could have led to the end of US engagement if sufficient pressure were applied. Epistemic communities of ‘experts’ and practitioners seek to influence policy-makers in both branches of government to take certain courses of action identified with their particular professional interests and capabilities (Jacob and Page 2005, 108), often including officials in government agencies at both domestic and international level. Clear examples can be found during the preparations for the invasion of Iraq where CIA intelligence had a definitive influence on the administration’s decision to go to war (Pillar 2006). The notion of ‘iron triangles’ expresses this relationship between legislators, special interests and bureaucrats working to influence the policy process for mutually beneficial arrangements (Jordan 1981, 99-100); they are common across policy subsystems but their entrenchment in foreign policy especially facilitates the growth of presidential power and its development as a norm. The bargaining and negotiating described by the bureaucratic model is influenced to a great extent by domestic pressures on both Congress and the president, resulting in conflict and indecision as demonstrated clearly in the Libya case study, leading to a need for presidential leadership in decision-making. The WPR is intended to prevent such a situation and afford Congress a mechanism by which it can reign in the president and ensure that its position at the negotiating table is maintained. However, the relevance of the resolution is called into question when it fails to be implemented effectively. As the cases discussed show, executive-legislative conflict in foreign policy decision-making remains a power struggle, but the outcome is increasingly a foregone conclusion.

## 2nc at uniqueness overwhelms

The window is narrow

Siobhan Gorman, WSJ, 3/25/14, Consensus Nears to Overhaul NSA Phone Surveillance, online.wsj.com/news/articles/SB10001424052702304679404579461293671732298?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304679404579461293671732298.html

The White House and congressional leaders have settled on comparable proposals for ending the government's mass collection of telephone records, signaling the eventual end of a practice that critics said had come to epitomize U.S. surveillance overreach in the post-9/11 era. The proposals, offered in separate announcements on Tuesday, signified a rapidly expanding consensus among lawmakers, intelligence agencies and civil-liberties groups on how to overhaul the National Security Agency program. But the developments didn't offer assurance of quick congressional passage, which would require support from lawmakers who favor more limitations on surveillance. Moving any legislation through Congress in an election year will be challenging, particularly highly sensitive bills. Yet, the clock is ticking. If Congress doesn't approve a revamped version of the program, the current one is likely to end when the law that authorizes it expires next year, lawmakers say. The emerging agreement, coming nine months after revelations by former NSA contractor Edward Snowden last year stoked international anger over U.S. spying practices, represents the most significant development in the debate to date. The proposals from the White House and House intelligence committee both would replace a system reliant on daily data feeds to the NSA with one that directs phone companies to conduct individual searches of their data on the NSA's behalf.

Uniqueness never overwhelms with this Congress

NYTimes, Editorial Board, 3/25/14, Mr. Obama’s Limits on Phone Records, www.nytimes.com/2014/03/26/opinion/mr-obamas-limits-on-phone-records.html?hp&rref=opinion

Ending bulk collection now wouldn’t undermine Mr. Obama’s proposal to Congress. In fact, if his promise is matched by the final details (which are not yet available), it could be an important and positive break from the widespread invasion of privacy secretly practiced by the National Security Agency for years. Getting a law to create strong judicial oversight of data collection would be a check on the ambitions of future presidents. But once the question is tossed into the maelstrom of Congress, where one party routinely opposes anything the president wants, the limits could be delayed, or diluted, or just killed. And while lawmakers wring their hands, the invasion of privacy will continue. As Charlie Savage reported in The Times on Tuesday, the president is planning to ask Congress to end the N.S.A.’s systematic collection of telephone records begun under President George W. Bush, an action already endorsed by his independent board of advisers. The records will be left in the hands of the phone companies, where they belong, until the N.S.A. gets permission from a judge to review an individual record because of a possible tie to terrorism. (The companies would only have to store the data 18 months, compared with the agency’s five years.) The requirement for judicial review is one of the most important parts of the president’s plan. Just as police departments have to get a court order for a wiretap, the intelligence agencies need to present their justification to an outside arbiter for a request of telephone data, which can be as revealing as the content of a conversation. The provision distinguishes the White House plan from a much weaker bill introduced by the leaders of the House Intelligence Committee, which would allow the N.S.A. to subpoena individual records without judicial approval.

It’ll pass now, but partisanship is already creeping in

Stewart Baker, WaPo, 3/25/14, The New Phone Metadata Program, www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/25/the-new-phone-metadata-program/

According to the New York Times, the President has decided to kill the existing NSA phone metadata program and come up with a substitute that leaves the metadata with the phone companies. The decision will limit the government’s ability to find older connections, since few companies hold records for three or more years; it will also be hard to construct a social graph that combines customers of different carriers. This may have been inevitable when large swaths of the Republican party decided to treat NSA as though it were an arm of Organizing for America. But even so, the President’s decision is disappointing for other reasons. The key passage for the future is this passage in the NYT story: In recent days, attention in Congress has shifted to legislation developed by leaders of the House Intelligence Committee. That bill, according to people familiar with a draft proposal, would have the court issue an overarching order authorizing the program, but allow the N.S.A. to issue subpoenas for specific phone records without prior judicial approval. The Obama administration proposal, by contrast, would retain a judicial role in determining whether the standard of suspicion was met for a particular phone number before the N.S.A. could obtain associated records. The administration’s proposal would also include a provision clarifying whether Section 215 of the Patriot Act, due to expire next year unless Congress reauthorizes it, may in the future be legitimately interpreted as allowing bulk data collection of telephone data. The House intelligence committee has been working to produce a bipartisan replacement for the metadata program. The President had a chance, rare for him, to embrace bipartisanship and work with the House committee. This certainly looks doable, since it appears from press coverage that the differences between the White House and the House approach are modest.

## Delayed fight

Now is key

AP, 3/28/14, Obama Seeks Quick End To NSA Phone Record Program, chicagodefender.com/2014/03/28/obama-seeks-quick-end-to-nsa-phone-record-program/

President Barack Obama asked Congress on Thursday to end quickly the government’s bulk collection of Americans’ phone records, which could be a big ask for lawmakers who don’t often move quickly without a looming deadline. Responding to public outrage over the National Security Agency program, the Obama administration came up with a new program that it says would address privacy concerns and preserve the government’s ability to fight terrorism. Under the proposal, Congress has three months to draft and pass a measure to end the bulk collection program. The Obama administration has asked the court to reauthorize that collection for another three months, while lawmakers consider an alternative. Under the current system, the government gets court approval every three months to collect all call records from certain phone companies daily. The real looming deadline for action is June 1, 2015. That’s when the section of a law that has been used to authorize the program is set to expire. The Obama administration could continue to seek court approval to collect the phone records five more times before the law expires. Obama could have ended the bulk collection program now, said Sen. Patrick Leahy, D-Vt., chairman of the Judiciary Committee and a proponent of changing NSA surveillance programs. The administration said it sought reauthorization for another 90 days to maintain its counterterrorism capabilities until a new program was in place. Congress has been debating what to do about this once-classified program since last June, when former NSA systems analyst Edward Snowden revealed details about the massive surveillance operation. Dozens of bills have been introduced, and the issue has caused divisions even within political parties. Finding consensus on how to change the program could take most, if not all, of the 430 days that Congress actually has. During that time period, many members of Congress are up for re-election, and the primary campaign for the next presidential race will be underway. Until now, many thought Congress would most likely let the phone records collection program expire next year. “I think that the administration was under the gun to come up with something that might satisfy those who want to see the end of the program, such that they could avoid that result in 2015,” said Kevin Bankston of the New America Foundation, a nonpartisan think tank. Under the president’s plan, the government would have to get a court order and ask phone companies to search their records for specific numbers that are believed to be associated with terrorists. Phone companies would not hold onto the records for any longer than they’re already required to under federal regulation, which is 18 months. “I believe this approach will best ensure that we have the information we need to meet our intelligence needs while enhancing public confidence in the manner in which the information is collected and held,” Obama said in a statement Thursday. Obama has said that he never thought the program was unconstitutional or ripe for abuse, but he was forced to respond to perceived privacy concerns. Key lawmakers said they like some of Obama’s proposal, but want more.

Now key – 3 month window for reform

Peter Van Buren, HuffPo, 3/28/14, Dissecting Obama’s Proposed NSA Reforms, www.huffingtonpost.com/peter-van-buren/dissecting-obamas-propose\_b\_5048694.html

We also have a handy delay built into the proposal. The current spy programs technically expire March 28, but Obama is asking that good old Foreign Intelligence Surveillance Court to renew the program as it exists for at least one more 90-day cycle. So while the reforms are needed according to the president, there's no real hurry and the NSA can keep on spying on us at least into the summer. With some irony, that additional 90 days brings us quite close to the anniversary of Snowden's revelations last June.

## link uniqueness ov

Yes link uniqueness—yes, there are partisan press releases, no there are not partisan legislative fights

Bill Scher, The Week, 3/28/14, Is bipartisan foreign policy making a comeback?, theweek.com/article/index/258857/is-bipartisan-foreign-policy-making-a-comeback

The partisan sniping surrounding Russia's annexation of Crimea is still hot. Sen. John McCain (R-Ariz.) recently said the White House response to Russia's actions has been "timid." Senate Majority Leader Harry Reid (D-Nev.) implied that Republicans deserve the blame, saying events may have "unfolded differently" if Republicans hadn't held up his Ukraine aid bill.

And yet, aid to Ukraine won a big bipartisan vote this week. Reid jettisoned a provision reforming the International Monetary Fund resisted by Republicans, and in return, Republicans are buttressing President Obama's approach to Russia instead of undermining it.

Might this be a return to the mythic days of old when partisan politics stopped "at the water's edge"?

Despite all the political flak in the air, the two parties are being brought closer together over Russia. A common animus toward Russian President Vladimir Putin has emerged, with many Republicans skeptical of Russia's interest in diplomacy and many Democrats seething at Putin for whipping up homophobia in his country.

But there are other factors, beyond an easy dislike of the Russian strongman, that help diminish the partisan daylight.

One is the widespread war-weariness after the messy outcomes of Iraq and Afghanistan, which is hemming in the militaristic impulses of the Right. As Paul Waldman, writing in the Washington Post, recently observed, the neoconservative "tough guys" aren't being so tough anymore: "These days it's all imposing sanctions and freezing assets and boycotting economic summits and making statements."

Case in point: McCain, in a speech earlier this month scorching Obama for being "M.I.A.", was forced to concede that in Ukraine "there is not a military option that can be exercised now." McCain and other Republicans had been pressing Obama to levy economic sanctions, expel Russia from the Group of Eight, and — in what amounts to the closest call for actual military action — send military aid to the Ukrainian government. Obama did the first two and has left the door open to the third. Furthermore, the Senate's No. 2 Democrat, Richard Durbin (Ill.), not considered to be hawkish, backs military aid.

The second factor is a shared bipartisan unease with the public's turn toward isolationism, and the potential for Sen. Rand Paul (R-Ky.) to capitalize on it in the 2016 presidential campaign. The percentage of the public that believes America should "take the leading role among all other countries in the world in trying to solve international conflicts" is down 17 points since 2003, hitting 31 percent in a February CBS/New York Times poll.

McCain vented his concern with Paul's rising influence last year when he said, "There are times these days when I feel that I have more in common on foreign policy with President Obama than I do with some in my own party." These remarks are proving more relevant than his broadsides against Obama. It was McCain who led the Republican charge in the Senate for Ukraine aid, while Minority Leader Mitch McConnell (R-Ky.) shed his long-standing internationalism in order to fight for his political life in the state that Paul also represents.

If these seem like thin reeds on which to claim the return to a bipartisan foreign policy, keep in mind that partisanship beyond the water's edge has long been standard operating procedure, not the other way around.

Senate Republicans thwarted President Woodrow Wilson's dream for a League of Nations. Dwight D. Eisenhower won the presidency by slamming Harry Truman's handling of the Korean War. Adlai Stevenson later accused Eisenhower of losing the Cold War. Richard Nixon challenged Lyndon Johnson's management of the Vietnam War, and four years later George McGovern was doing the same to Nixon. Republicans savaged President Jimmy Carter for ceding control of the Panama Canal to Panama and for the Iran hostage crisis. Democrats were panicked that Ronald Reagan was going to get us into a nuclear war with the Soviets, and the Reagan administration was hobbled by the Iran-Contra affair. House Republicans refused to back President Bill Clinton's bombing campaign to stop ethnic cleansing in Kosovo. And of course, Democrats pounded George W. Bush over Iraq.

Just to name a few.

So a degree of public friction is always to be expected. In many of the above cases, disputes were based on deep philosophical differences regarding the value of confrontation and negotiation. Those differences remain today as Republicans scoff at Obama's negotiations with Iran and the Palestinian Authority.

But there might be something new at work regarding Russia. Republicans are shying away from crude militarism, while President Obama is turning toward confrontation, and the ideological gap has narrowed. If that proves to be an anomaly that only applies to Russia, little has really changed. But if this common ground leads to a broader understanding of foreign policy objectives and tactics between the parties, that could bolster a true bipartisan consensus as Obama finishes the final leg of his presidency.

## 1nc terror

Key to solve terrorism

Mann 2/27/14

Scott F. Mann is a research associate with the Strategic Technologies Program at the Center for Strategic and International Studies, CSIS, February 27, 2014, "Fact Sheet: Section 215 of the USA PATRIOT Act", http://csis.org/publication/fact-sheet-section-215-usa-patriot-act

Background: Section 215, also known as the “Tangible Things” or “Business Records” provision of the USA PATRIOT Act, amended Section 501 of the Foreign Intelligence Surveillance Act and permits the collection of “…tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information…” The collection of such items is permitted if the investigation seeks to obtain foreign intelligence information that does not concern U.S. persons. If it the information sought does relate to a U.S. person, it must be relevant to preventing terrorism or espionage, and not be based solely upon activities protected by the first amendment. To prevent improper utilization of the data, Section 215 requires the adoption of specific minimization procedures, which have been outlined in recently declassified Foreign Intelligence Surveillance Court (FISC) orders. This provision of the PATRIOT Act has been interpreted to permit the bulk collection of “telephony metadata,” or the mass collection of basic call-log information, from telecommunications companies. This includes the date, time, and duration of calls to and from all phone numbers. This telephony metadata does not include specific personally identifying information such as the names or addresses connected to the phone numbers. If a problem is found with a particular number, and the number is believed to be attributed to a U.S. person, that information is passed to the FBI, which must then use publicly available information, either through other sources of intelligence or court orders, to connect the number with subscriber information.

Controversy: The bulk collection of metadata under Section 215 is one of the most controversial aspects of the NSA’s intelligence collection activities. Critics argue metadata can reveal the most intimate details of an individual’s life, and that because the 215 collection program indiscriminately sweeps up the data of U.S. citizens, it violates Fourth Amendment protections against warrantless search and seizure. The long list of "tangible things" the government can seek excites critics, who fear government overreach. Critics also argue Section 215 has not been an effective counterterrorism tool.

Assessment: There are legitimate operational reasons for the bulk collection of data. Unlike law enforcement investigations, which analyze crimes retrospectively (that is after they have been committed), counterterrorism intelligence collection focuses on preventing attacks in the future. Information must be collected prospectively to be effective. Good intelligence is built upon the accumulation of information from multiple sources, both big and small, and often of ambiguous significance. There are rarely any ‘smoking-guns.’ Removing any single intelligence capability from the threat detection picture could limit the IC’s ability to protect the nation in the future. Intelligence analysis is like looking at a jigsaw puzzle and guessing the picture when you don’t have all the pieces. That makes every piece you do have useful.

Extinction

Hellman 8 (Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, <http://www.nuclearrisk.org/paper.pdf>)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

# 2nr

#### Mearsheimer's a hack, he underestimates the risk

Adesnik 14

David Adesnik is a visiting fellow at the Marilyn Ware Center for Security Studies at the American Enterprise Institute (AEI), where he works on isolationism, national security strategy, and democracy promotion, National Interest, January 12, 2014, "Realism vs. Reality", http://nationalinterest.org/commentary/realism-vs-reality-9694?page=show

John Mearsheimer is not especially worried about terrorism. It is only “a minor threat”. The attacks of September 11th may have been spectacular, but “did not cripple the United States.” Besides, another attack of that magnitude is “highly unlikely”. Even “nuclear terrorism, in short, is not a serious threat.” Mearsheimer writes that “significant obstacles” face any organization seeking to procure fissile material and weaponize it. Finally, he does not even break a sweat when considering that an unstable nuclear regime may lose control of its arsenal. Yes, he admits, “Political turmoil in a nuclear-armed state could in theory allow terrorists to grab a loose nuclear weapon, but the United States already has detailed plans to deal with that highly unlikely contingency.” This blithe confidence in the marginal relevance of terrorism is essential to Mearsheimer’s main argument, that “what happens [in Egypt and Syria] is of little importance for American security”; furthermore, US exaggeration of these countries’ significance reflects a fearful American mindset that detects dire threats “in every nook and cranny of the globe.” Yet if one pulls on the loose threads in Mearsheimer’s stance on terrorism, the logic of his essay begins to unravel.

It is striking that Prof. Mearsheimer’s comfort with loose nukes rests on his faith in “detailed” US planning for intervention in failed or failing states, which he tends to dismiss as futile. Perhaps he imagines that securing such weapons will entail nothing more than a series of commando raids, like the one that resulted in the death of Osama bin Laden. Yet what if a failed state, say Pakistan in 2020, has dozens or hundreds of nuclear caches to secure? The US mission may entail a sizable intervention, including a prolonged counterinsurgency campaign, perhaps with a measure of the “social engineering” that Mearsheimer dreads. The value of being prepared for such a campaign is not something he can accept. Previously, he has described American interventions in Iraq and Afghanistan not just as failures, but as “unwinnable.”[1] This absolutism may be rhetorical excess, but Mearsheimer has argued that favorable conditions for counterinsurgency are so rare that it is practically impossible for the benefits to outweigh the costs.[2]

Of course, US intervention in Syria – for now a dead letter – was unlikely to involve boots on the ground. Instead it could’ve followed the pattern of Kosovo and Libya, where US and allied air power provided a decisive advantage to indigenous rebel forces. In Syria, the US had the opportunity to remove a tyrant who was a critical asset for both Iran and Hezbollah. Yet Mearsheimer insists “If anything, intervention [in Syria or Egypt] is likely to make a bad situation worse.” He then cites “America’s dismal record in Iraq, Afghanistan and Libya.” Yet in Libya, we prevented a horrific massacre and ousted Muammar Qaddafi, while leaving behind an admittedly unstable situation. In Afghanistan, Mearsheimer actually called for an end to the US air war in mid-November 2001, arguing instead for a campaign of “bribery [and] covert action” making “the fullest use of Pakistani intelligence and influence.” Why? Because the Northern Alliance was unreliable, the Taliban elusive and Afghan nationalism would ensure an unwelcome reception in Kabul.[3] He was wrong on every point. Without reference to his earlier prediction, Mearsheimer later admitted, “Sometimes it is easy to eliminate hostile regimes, as the US did in Afghanistan.”[4] Of course, American blundering can make things worse. After four years of inattention, the Taliban re-emerged and became a serious menace. In Iraq, a lethal insurgency emerged within months of the US invasion. Only after four agonizing years did the Coalition employ an effective strategy against the insurgents backed by sufficient manpower. Within months, violence plummeted. Yet as late as 2011, Mearsheimer insisted, “the surge has not been a success,” because of ongoing political instability.[5] Ironically, the melting away of American gains in Iraq is attributable in no small part to a President who shared Prof. Mearsheimer’s revulsion at the war itself and refused to leave behind a stabilizing force to maintain leverage over the Maliki government.

To understand why Mearsheimer cannot countenance American “meddling” in other nations’ politics, it’s necessary to place “America Unhinged” within the context of Mearsheimer’s extensive theoretical writing. He identifies himself as a “structural” or “neo-” realist, meaning that he considers states to be the fundamental units in world politics and seeks explanations for their behavior based on their material power relative to other states. Hence, the ideas that guide a state’s leadership are effectively irrelevant, since the state’s interests are determined by the balance of power. Thus Mearsheimer can write with brio, “It does not matter much who is in charge in Cairo or Damascus.” To make such a position plausible, for Syria in particular, Mearsheimer must downplay the threat of terrorism, especially nuclear. Yet in 2006, he stated that nuclear terrorism “is clearly the greatest threat now facing the United States.”[6] Discomfited by the unpleasant facts of the Syrian civil war, Prof. Mearsheimer contradicts himself in order to save his theory and justify his politics.

Such tensions illustrate how Mearsheimer’s unrelenting commitment to structural realism prevents him from being the kind of realist who sees the world as it really is. While realists are emphatic about the dangers of ideological thinking – especially the dangers of American Exceptionalism – the irony is that Mearsheimer’s own structural realism has fitted him with a set of ideological blinders. Within academia, Mearsheimer is infamous for his prediction that after the Cold War, the nation-states of Europe would return to their 19th century practice of aggressive power balancing, rather than progressing toward a peaceful union. While most realists have written off that failure, Mearsheimer can’t bring himself to admit that new ideas about European identity are what prevent further wars between Britain, France, Germany, and their neighbors. In his keynote address to a gathering of European scholars, Mearsheimer even insisted his prediction cannot truly be tested “until US troops are pulled completely out of Europe and NATO is disbanded.”[7]

Meanwhile, even those realists with structuralist leanings have recognized the lessons of 9/11 regarding failed states and non-state actors. According to a 2002 article in International Security, “if Afghanistan had been governed by a more capable and moderate regime over the past decade, bin Laden would not have found sanctuary there…The danger that some failed states pose remind us that unresolved conflicts are always a potential danger…Thus helping to settle protracted civil conflicts is not merely good for the world in general, it can also make the United States safer.”[8] Thus wrote Stephen Walt, Mearsheimer’s frequent co-author and fellow critic of the “foreign penetration” of American policymaking by ethnic lobbies.[9] If Prof. Mearsheimer finds his colleague’s arguments persuasive, he ought to reconsider his view that, in the Mideast, “only the oil-producing states of the Persian Gulf are of marked strategic importance.” In fact, he (and perhaps Prof. Walt) may want to send a brief note of thanks to the Israeli armed forces, whose 2007 destruction of the al-Kibar nuclear reactor prevented nuclear materials from spilling onto Syrian battlefields today. Unless, of course, Mearsheimer prefers to stand by the assertion that America’s “detailed plans” would have nimbly resolved such a nightmare.