### \*\*2AC\*\*

### Solvency

**release is a question of habeas, not immigration—their definition relies on a flawed district court decision**

**Vaughns 13** (Katherine, Professor of Law, University of Maryland, "Of Civil Wrongs and Rights: Kiyemba v. Obama and the Meaning of Freedom, Separation of Powers, and the Rule of Law Ten Years After 9/11" Asian American Law Journal, Lexis)

As for Kiyemba, in the district court, the government asserted that the Executive may detain individuals pursuant to its inherent "wind-up" authority, the purported authority to detain individuals associated with a conflict for some period of time following the end of that conflict. n236 It then argued that Shaughnessy v. United States ex rel. Mezei n237 "provides a better read on the constitutional limits to detention than either Zadvydas or Clark." n238 Mezei is a case that involved "an alien immigrant permanently excluded from the United States on security grounds but stranded in his temporary haven on Ellis Island because other countries [would] not take him back." n239 The district court, reviewing the Uighurs' petitions, found several very important distinctions between Mezei and the petitions before the court: First, **Mezei was an immigration case; Kiyemba is not. Unlike in Mezei, the Uighurs are not seeking immigrant admission to the United** [\*41] **States**. n240 Second, **in Mezei, the lower court was not aware of the evidence against the petitioner's admission because it was confidential and undisclosed; in the case of the Uighurs, the government presented evidence supposedly "justifying" their detention, but "failed to meet its burden."** n241 Consequently, the court concluded - "drawing from the principles espoused in the Clark and Zadvydas cases and from the Executive's authority as Commander in Chief" - that the asserted constitutional authority to "wind up" matters administratively prior to release had ceased. n242 I agree. **Relying on Mezei, and** largely **ignoring Boumediene**, n243 **the D.C. Circuit Court of Appeals found that the district court lacked the requisite authority to order the government to admit the Uighurs into the continental U**nited **S**tates. **In so doing, the court refused to appreciate a key distinction: The habeas court would not be ordering the admission of the Uighurs into the U**nited **S**tates **under immigration law. Rather, their release is mandated by the constitutional guarantee of habeas relief,** particularly **as the Uighurs' plight was in no way of their own making.** n244 **In light of the foregoing, it is clear that, until the Supreme Court explicitly rules on the constitutional remedy available to such detainees** (as distinguished from the right to challenge the lawfulness of their detention, which was established by Boumediene), **the D.C. Circuit will continue to misguidedly apply immigration law to an issue plainly outside of its purview, with the effect of granting nearly unreviewable discretion to the Executive and therefore, leaving the Uighurs indefinitely and unlawfully detained at Guantanamo** Bay until the Executive is able to secure a relocation destination. **As stated in the Uighurs' certiorari petition, as a constitutional matter, "the President's discretionary release of a prisoner is no different from his discretionary imprisonment: each proceeds from unchecked power."** n245 **To** [\*42] **view the question of release as** based on sovereign prerogative in the administration of **immigration law, while viewing the question of imprisonment as** based **on constitutional authority is, put simply, senseless and without precedent**. It cannot be that the two inquiries are unrelated; they both undoubtedly implicate individual constitutional rights and the separation of powers. Having refused to resolve this matter, the Supreme Court has left the separation of powers out of balance and tilting dangerously toward unilateralism.

#### Obama decreasing drone strikes now

LA Times 13 (5-23-13, "Obama puts restrictions on drone program" LA Times) articles.latimes.com/2013/may/23/world/la-fg-obama-drones-20130524

WASHINGTON — Reining back the aggressive counter-terrorism strategy he has embraced for five years, President Obama declared clear, public restrictions for the first time on using un~~manned~~ [staffed] aircraft to kill terrorists, a shift likely to significantly reduce U.S. drone strikes in Pakistan and elsewhere.

### Terror: A2 “Mueller”

**Mueller’s wrong—Cherry Picks his arguments**

Hugh **Gusterson**, February 20**11**, Anthropologist on Nuclear Culture, International Security and Anthropology of Science at George Mason University “Atomic Escapism” American Scientist, Volume 99, Number 1, pg.72 Lexis

**Reading John Mueller’s Atomic Obsession is like going through the looking glass with Alice.** Examining the conventional wisdom about nuclear weapons from the other side of the looking glass, Mueller tells us that their destructiveness has been exaggerated; that the bombings of Hiroshima and Nagasaki were of marginal importance in ending World War II; that “nuclear weapons have been of little historic consequence,” and that the United States and the Soviet Union would not have gone to war even in the absence of nuclear deterrence; that arms-control treaties are usually a waste of time and effort; that the dangers of nuclear proliferation are greatly exaggerated; that sanctions aimed at stopping countries from seeking nuclear weapons make it more likely that they will pursue them; and, finally, that “the likelihood a terrorist group will come up with an atomic bomb seems to be vanishingly small.”¶ **In arguing against atomic “alarmism” and the inclination “to wallow in a false sense of insecurity,” Mueller has something to annoy everyone**. Conservatives can take umbrage at his arguments that the bombing of Hiroshima was unnecessary to end World War II and that the Cold War nuclear buildup was not needed to deter the Soviets. Liberals can be upset by the claim that arms-control treaties are pointless and sometimes even counterproductive.¶ The challenge in reading Mueller’s book is to separate insights that are deviant but useful (some of his deconstructions of the conventional wisdom are genuinely insightful) from arguments that are deviant because they are exaggerated, misshapen or just plain wrong. Many of Mueller’s sharp-edged points about the hyping of the dangers of nuclear proliferation and terrorism fall into the first (insightful) category, but his critiques of arms control and his apparent smugness about all nuclear dangers belong in the latter.¶ Mueller argues that liberals and conservatives have joined in exaggerating the danger and importance of nuclear weapons; they have used our fears over the years to justify unnecessary weapons programs and arms-control negotiations, a counterproductive invasion of Iraq, and now bloated counterterrorism initiatives. **He builds his argument atop an exercise in counterfactual history, maintaining that nuclear weapons were unnecessary to keep the peace during the Cold War, because both superpowers would have been deterred from war anyway by memories of the carnage of World War II, and because the Soviet Union was too risk-averse to chance an invasion of Europe**. (**He does not ask whether Soviet nuclear weapons might have deterred the United States from starting a war with the Soviets**.) **Those who know Cold War history in its rich complexity will be infuriated by the simplifications, omissions and blithe assumptions in this exercise in intellectual casuistry, which brings to mind not the work of a scholar seriously weighing evidence, but the efforts of a high-school debate team to push a contrived point of view as far as possible.¶** The most original, incisive and interesting part of the book is the last third, in which Mueller slashes through the hype that guides much public discourse and policymaking about the risk of nuclear terrorism. He points out that a foreign government is unlikely to give a nuclear weapon to a terrorist group because of the danger that, as supplier, that country would invite retaliation against itself. He also uses the writings of several nuclear scientists, including the former Los Alamos division leaders Carson Mark and Steve Younger, to argue that it would be prohibitively difficult for a small terrorist group that lacked state sponsorship to acquire the subtle engineering knowledge needed to overcome the technical challenges involved in turning black-market nuclear material into a workable nuclear weapon. Many scientific experts not cited here by Mueller would take issue with that argument. And having read one of the articles that Mueller does cite—“Can Terrorists Build Nuclear Weapons?,” by J. Carson Mark and others (1987)—I am of the opinion that it does not, in fact, support Mueller’s argument. Furthermore**, in dismissing the case for a terrorist nuclear threat, Mueller does not adequately address the possibility that a terrorist group seeking a bomb might have access to a scientist with nuclear-weapons experience from another state as an adviser or team member.** Still, by pointing out the importance of tacit and esoteric knowledge to the success of such an endeavor**, Mueller is making an important challenge to glib assumptions about the ease with which a terrorist group, even if it had access to uranium and plutonium, might be able to make a bomb.¶** **Mueller fails to discuss another possibility:** that **a rogue element within a state, not the state leadership itself, might sell an intact nuclear weapon to which it has access**. **This scenario is far from speculative**: After the fall of the Berlin wall, a Soviet soldier guarding nuclear weapons in East Germany offered to sell an atomic warhead to the antinuclear organization Greenpeace; Greenpeace wanted to buy the weapon and display it to show the dangers of nuclear proliferation. They were arranging payment and transportation when the warhead in question was abruptly removed from East Germany by the Soviets. It is, sadly, all too typical of Mueller’s style of argument that he makes his case with copious references to any literature that supplies evidence supporting his point of view, but he ignores inconvenient facts and arguments.¶ We see something similar **in Mueller’s discussion of arms-control treaties**. He **regards such treaties as bureaucratically unwieldy and argues that states often only agree to them when they involve no real sacrifice or merely codify what the state already intended to do**. **He bases this argument largely on a discussion of the Limited Test Ban Treaty of 1963, which forced nuclear testing underground but did nothing to curtail the nuclear arms race, and the Strategic Arms Limitation Talks Agreement (SALT I), which limited missiles but not the newly miniaturized warheads packed several to a missile, which were the real problem.¶** **Mueller has cherry-picked his treaties here. Why not discuss the Outer Space Treaty, which preempted a nuclear arms race in space?** And what about the 1988 Intermediate-Range Nuclear Forces (INF) Treaty, which eliminated an entire category of nuclear weapons from Europe, much to the chagrin of hardliners in both superpowers? Above all, **why not discuss the 1972 Anti-Ballistic Missile (ABM) Treaty (the existence of which, astonishingly, is never mentioned in Mueller’s book)?** The ABM Treaty was widely seen by arms-control advocates as having headed off an expensive and destabilizing race between offensive and defensive weapons during the Cold War.¶ The strengths and weaknesses **of Mueller’s argument collide most jarringly in his discussion of nuclear proliferation.** **He is entertaining when he catalogs decades of dire predictions from experts about a coming cascade of countries crossing the nuclear threshold—predictions that have failed to come true, although this has not deterred contemporary pundits from re-sounding the alarm.** And we need to think seriously about his argument that sanctions intended to deter nuclear proliferation killed hundreds of thousands of civilians in Iraq and North Korea while increasing the attractiveness of nuclear weapons to the paranoid leaders of those countries; the remedy may be worse than the disease.¶ But **surely Mueller goes too far, and his polemical casuistry becomes dangerous, when he argues that sanctions and treaties are largely unnecessary because most countries have freely eschewed proliferation, recognizing that nuclear weapons are “militarily useless, and a spectacular waste of money and scientific talent.”** Although he is surely right that nuclear weapons are overrated and often fail to bring the bargaining power and military strength their owners seek, some countries (whether because they are in a bad neighborhood or have a bad regime) have spared no expense to seek them. **And when a country acquires them, this puts pressure on rivals and neighbors to seek them too** (as Pakistan did in response to India, for example). **There can be a collective logic that forces individual countries to make choices they would rather not. The importance of the Treaty on the Non-Proliferation of Nuclear Weapons, for which Mueller shows so little respect, is that it releases countries from the prisoner’s dilemma here: The treaty and its inspection provisions give confidence to countries who want to eschew nuclear weapons as long as they can be sure that their rivals do so too**. This is why Brazil and Argentina both joined the treaty regime in the 1990s, for instance.¶ In short, **Mueller has a gimlet eye for hype about nuclear weapons but is blind to their very real dangers. His book, which should sport a “don’t-worry-be-happy” smiley face rather than a scrawled atom on the cover, counsels us in its final sentence that we are not in danger and should “sleep well**.” **Mueller seems to assume that, because there has not yet been an accidental nuclear war, because terrorists have not yet exploded a nuclear weapon, and because no country has used nuclear weapons since the United States bombed Nagasaki, we are safe**. Presumably BP executives talked the same way about the safety of deep-water drilling before April 20, 2010; Soviet engineers talked the same way about the safety of their nuclear reactors before April 26, 1986; and NASA engineers talked the same way about the safety of shuttle launches at low temperatures before January 28, 1986. **In regard to nuclear weapons, we have** arguably **been lucky**. **There have been several incidents in which U.S. planes carrying nuclear weapons have crashed or burned.** In 1995 the Soviets mistook a Norwegian weather rocket for a U.S. nuclear attack, and Boris Yeltsin found himself staring into the nuclear briefcase as his aides told him he might only have a few minutes to launch Russian nuclear weapons. And we now know that in the early years of the Cold War, there were senior U.S. military officers who wanted to preemptively attack the Soviet Union.¶ Mueller mocks those who warn of events that are possible but have not happened. “There is a ‘genuine possibility,’” he says, “that Osama bin Laden could convert to Judaism, declare himself to be the Messiah, and fly in a gaggle of Mafioso hit men from Rome to have himself publicly crucified.”¶ **If only nuclear disaster were that unlikely.**

**Amend CP: 2AC**

**Perm do both—solves the link**

**Denning 2** (Brannon P, Assistant Professor of Law – Southern Illinois University School of Law; John R. Vile, Chair of Political Science – Middle Tennessee State University; November, 77 Tul. L. Rev. 247, Lexis)

The Article V process is, as the Framers intended, rigorous. **The supermajority provisions for both proposal and ratification almost always guarantee that additions will not be made to the Constitution without both deep and broad support. Though some have criticized the necessity of such supermajorities, 127 holding additions to the Constitution in abeyance until it is clear that support is broad generally prevents populous regions from dominating less populous ones. This, in turn, allows the amendment to become part of the Constitution with a near-conclusive presumption of legitimacy. This legitimacy, then, helps free the other branches (courts, for example) to enforce it vigorously; indeed, such enforcement would likely be expected after an amendment makes it through Article V's arduous process.** And if, after popular expectations were raised through the debates over proposal and ratification, the amendment is not enforced, institutions responsible for the foot-dragging may again face costs for evasion. This legitimization element is so crucial that the examples Strauss cites of amendments that, he argues, did not do anything immediately (the Reconstruction Amendments) or are not likely to have a significant effect despite their eventual ratification (the Twenty-Seventh Amendment), 128 could be cited as proof of what [\*279] happens when attempts are made to short-circuit (or play games with) Article V's procedural requirements. 129

**Judicial review is key to solve**

Christopher P. **Manfredi**, Professor of Political Science, McGill University, “Why Do Formal Amendments Fail?: An Institutional Design Analysis” World Politics, v. 50, April 19**98**, p. 377-400.

Perhaps because of the rigidity of its amending process**, the U.S. Constitution is** also **characterized by interpretive fluidity. This characteristic stems** not only from the broad, indeterminate language in which most constitutional provisions are written but also **from the willingness of courts to exercise the power of judicial review in order to derive more policy-specific rules from those provisions.** Although the U.S. Supreme Court established the constitutionality of judicial review in 1803, the interpretive fluidity of the U.S. Constitution has been most evident since 1954. Indeed, between 1889 and 1953 the Court overturned on average about one act of Congress and seven state laws every year. By contrast, since 1954 the judicial nullification rate has approximately doubled to almost two acts of Congress and twelve state laws per year. Especially throughout the 1960s, litigants took advantage of judicial openness toward the Constitution's interpretive fluidity to persuade U.S. courts to participate actively in shaping and administering policy in areas such as zoning and land-use planning, housing, social welfare, transportation, education, and the operation of complex institutions like prisons and mental health facilities. While this may make the document's rigid amending process less burdensome on the constitutional order, **the ability and willingness of courts to extend formal rules in unexpected directions heightens redistributive indeterminacy.** Finally, both the rigid amending process and the interpretive fluidity of the U.S. Constitution generate a high degree of institutional inclusiveness. On the one hand, interpretive fluidity provides society-based actors with a wide range of opportunities to institutionalize specific policy preferences by manipulating and transforming formal constitutional rules through litigation. Interpretive fluidity promotes institutional inclusiveness by allowing society-based actors to alter the policy impact of constitutional rules without the constraints imposed by the formal amending process. On the other hand, the requirement that ratification succeed in eighty-seven legislative chambers unconstrained by strict party discipline provides numerous points of influence for social actors wary of the policy consequences of proposed amendments. **The institutional inclusiveness of U.S. constitutional politics** thus **provides** both incentives to oppose constitutional change and**the means of carrying out that opposition successfully.**

**Courts will ignore the amendment**

**Segal & Spaeth ‘02** [The Supreme Court and the Attitudinal Model Revisted, p. 5-6]

If action by the Congress to undo the Court’s interpetation of one of its laws does not subert judicial authority, a fortiori neither does the passage of a constitutional amendment, for example, the Twenty-Sixth Amendment reducing the voting age to eighteen and thereby undoing the decision in Oregon v. Mitchell, which held that Congress could not constitutionally lower the voting age in state elections. Furthermore, not only does a constitutional amendment not subvert judicial authority, courts themselves—ultimately, **the Supreme Court—have the last word when determining the** sanctioning **amendment’s meaning**. Thus, **the Court is free to construe any amendment**—whether or not it overturns one of its decisions—**as it sees fit, even though its construction deviates** appreciably **from the language or purpose of the amendment.** Consider, for example, the fourteenth and Sixteenth Amendments. The former clearly overturned the Court’s decision in Scott v. Sandford and was meant to give blacks legal equality with whites. Scholars disagree about other objectives the amendment may have had, but it does appear that the prohibition of sex discimination was not among them. Nonetheless, in 1871 the Court held that the equal protection clause of the Fourteenth Amendment encompassed women. As for the Sixteenth Amendment, it substantially, but not completely, reversed the Court’s decisions in Pollock v. Farmers’ Loan and Trust Co., which declared unconstitutional the income tax that Congress had enacted in 1894. In 1913, the requisite number of states ratified an amendment that authorized Congress to levy a tax on income “from whatever source derived.” The language is unequivocal. Yet for the next twenty-six years the [6] Supreme Court ruled that this language excluded the salaries of federal judges. Why the exclusion? Because Article III, section I, of the original Constitution orders that judges’ salaries “not be diminished during their continuance in office.” Though it is an elementary legal principle that later language erases incompatible earlier language, the justices ruled that any taxation of their salaries, and those of their lower court colleagues, would obviously diminish them. Finally, in 1939 the justices overruled their predecessors and magnaminously and unselfishly allowed themselves to be taxed.

**They don’t solve – amendments only apply moving forward, don’t solve current cases**

Jill E. **Fisch**, Professor and Director, Center for Corporate, Securities, and Financial Law, Fordham Law School, “The Implications of Transition Theory for Stare Decisis,” JOURNAL OF CONTEMPORARY LEGALISSUES v. 13, 200**3**, p. 97-98.

The second alternative when stare decisis does not permit a court to change the law by overruling is for another lawmaker to effect the change. Congress can enact new legislation to overrule decisions involving statutory interpretation or common law rulemaking. The **Amendment process** provided by Article V **provides a mechanism to overrule constitutional decisions**. Some constitutional decisions can also be effectively overruled by other means; for example, states can overturn the Supreme Court's decision to limit federal constitutional rights by interpreting their own constitutions to provide such rights. **There is an important distinction, however, between overruling and these lawmaking alternatives. When a court overrules a precedent, the new legal rule is applied retroactively to all pending and future cases. Parties that relied upon the old rule are not accorded transition relief. In contrast, statutory changes and constitutional amendments generally apply prospectively.**

**No solvency --- delay**

**Duggin 5** (Sarah, Professor of Law – Catholic University of America, and Mary Collins, Law Clerk, Boston University Law Review, February, 85 B.U.L. Rev. 53, Lexis)

**The process of amending the Constitution is often a lengthy one – the Twenty-seventh Amendment was adopted more than two hundred years after it was first proposed. 513 Recent Congresses have generally provided self-executing, seven-year sunset provisions in the resolutions proposing constitutional amendments, 514 but even an amendment on the fast track is likely to take several years to become part of the Constitution.** Preparations for Presidential elections begin long before the actual events, and the threat of a national crisis is all too immediate. Congress should take interim measures to decrease the impact of the uncertainty created by the natural born citizenship proviso over the eligibility of Congressional leaders and cabinet members to assume the office of Acting President.

**Judicial decisions solve comparatively better than amendments**

**Strauss, ‘01** [David A., Harry N. Wyatt Professor of Law, The University of Chicago, “The Irrelevance of Constitutional Amendments”, Harvard Law Review, March, 114 Harv. L. Rev. 1457, ln]

Alternatively, it may be that majoritarian acts (or **judicial decisions**), precisely because they do not require that the ground be prepared so thoroughly, **can force the pace of change in a way that supermajoritarian acts cannot**. A coalition sufficient to enact legislation might be assembled - or **a judicial decision** rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), **might** be an important factor in **bring**ing **about more comprehensive change**. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place. Whatever one thinks of these broader speculations, however, they certainly do not entail a general skepticism about whether political activity matters at all. On the contrary, legislation and **judicial decisions** - as well as activity in the private realm that may not even be explicitly political - **can accumulate to bring about fundamental and lasting changes that are then,** sometimes, **ratified in a textual amendment**. Sustained political and nonpolitical activity of that kind is precisely what does bring about changes of constitutional magnitude. My claim is that such changes seldom come about, in a mature democracy, as the result of a formal amendment adopted by a supermajority.

### Defer Add-On: Chemical Soldiers 2AC

#### Military is developing chemical soldiers

Parasidis 12 (Efthimios, Assistant Professor of Law, Center for Health Law Studies, Saint Louis University School of Law, 2012, "Justice and Beneficence in Military Medicine and Research" Ohio State Law School, Lexis)

The United States military has a long and checkered history of experimental research involving human subjects. It has sponsored clandestine projects that examined if race influences one's susceptibility to mustard gas, n1 the extent to which radiation affects combat effectiveness, n2 and whether psychotropic drugs could be used to facilitate interrogations or develop chemical weapons. n3 In each of these experiments, the government deliberately violated legal requirements and ethical norms that govern human-subjects research and failed to provide adequate follow-up medical care or compensation for those who suffered adverse health effects. In defending its decisions, the government argued that the studies and research methods were necessary to further the strategic advantage of the United States. n4 The military's contemporary research program is motivated by the same rationale. As the U.S. Defense Advanced Research Projects Agency (DARPA) explains, its goal is to "create strategic surprise for U.S. adversaries by maintaining the technological superiority of the U.S. military." n5 Current research sponsored by DARPA and the U.S. Department of Defense (DoD) [\*725] aims to ensure that soldiers have "no physical, physiological, or cognitive limitations." n6 The research includes drugs that keep soldiers awake for seventy-two hours or more, a nutraceutical that fulfills a soldier's dietary needs for up to five days, a vaccine that eliminates intense pain within seconds, and sophisticated brain-to-computer interfaces. n7 The military's emphasis on neuroscience is particularly noteworthy, with recent annual appropriations of over $ 350 million for cognitive science research. n8 Projects include novel methods of scanning a soldier's brain to ascertain physical, intellectual, and emotional states, as well as the creation of electrodes that can be implanted into a soldier's brain for purposes of neuroanalysis and neurostimulation. n9 One of the goals of the research is to create a means by which a soldier's subjective experience can be relayed to a central command center, and, in turn, the command center can respond to the soldier's experience by stimulating brain function for both therapeutic and enhancement purposes. n10 For example, the electrodes can be used to activate brain function that can help heal an injury or keep a soldier alert during difficult moments. n11 Another goal is to create a "connected consciousness" whereby a soldier can interact with machines, access information from the Internet, or communicate with other humans via thought alone. n12

#### Chemical soldiers cause extinction and destroy value to life

Deubel 13 (Paula, Professor Gabriel has held positions at the Brookings Institution, the Army Intelligence School, the Center for the Study of Intelligence at the CIA, and at the Walter Reed Army Institute of Research, Department of Combat Psychiatry, in Washington. 3-25-13, "The Psychopath Wars: Soldiers of the Future?" Suite 101) suite101.com/article/the-psychopath-wars-soldiers-of-the-future-a366977 \*\*evidence is gender modified\*\*

According to Dr. Richard A. Gabriel in his fascinating book, No More Heroes, the sociopathic personality can keep his or her psyche intact even under extremely pathological conditions, while the sane will eventually break down under guilt, fear, or normal human repulsion. Chemical Soldiers Richard A. Gabriel (military historian, retired U.S. army officer and former professor at the U.S. Army War College) describes socio/psychopaths as people without conscience, intellectually aware of what harm they might do to another living being, but unable to experience corresponding emotions. This realization, Gabriel claims, has led the military establishments of the world to discover a drug banishing fear and emotion in the soldier by controlling ~~his~~ [their] brain chemistry. In order for soldiers to ideally function in modern war ~~he~~ [they] should first be reconstructed to become what could be defined as mentally ill. “We may be rushing headlong into a long, dark chemical night from which there will be no return,” warns Gabriel. If these efforts succeed (as it appears they can) a chemically induced zombie would be born, a psychopathic-type being who would function (at least temporarily) without any human compassion and whose moral conscience would not exist to take responsibility for his actions. “Man’s [Humankind’s] nature would be altered forever,” he adds, “and it would cost him his [us our] soul.” As incredible and futuristic as that sounds, the creation of such a drug is apparently already well underway in the world’s military research labs; Gabriel reports such research centers already exist in the United States, Russia, and Israel. Since all emotions are based in anxiety, it appears the eradication of it (perhaps through a variant of the anti-anxiety medication Busbirone) may create soldiers who become more efficient killing machines. Futuristic Warfare Gabriel writes further about the possible nightmarish future of modern warfare: “The standards of normal sane men will be eroded, and soldiers will no longer die for anything understandable or meaningful in human terms. They will simply die, and even their own comrades will be incapable of mourning their deaths […] The battlefields of the future will witness a clash of truly ignorant armies, armies ignorant of their own emotions and even of the reasons for which they fight.” (Operation Enduring Valor, Richard A. Gabriel) This would strip a person of his core identity and all of his humanity. Whether or not the soldier would knowingly take part in this experience is unknown, but during the 1991 Persian Gulf War, one could almost easily imagine that this conscience-killing pill had already been swallowed. Psychopathic Behavior During War During the 1991 Iraq war a pilot interviewed on European television callously remarked ambushing Iraqis was “like waiting for the cockroaches to come out so we could kill them." Other U.S. pilots compared killing human beings to “shooting turkey” or like “attacking a farm after someone had opened a sheep stall.” This same lack of empathy can be seen in Iraq’s Abu Graib prison scandal (2004) where U.S. soldiers were shown seemingly to enjoy torture, as well as more recent photos of military men posing with dead Afghans (first published in Germany's Der Spiegel magazine); more gruesome photos were later published in Rolling Stone before the U.S. Army censored all the remaining damning material from public view. No More Heroes warns that modern warfare will become increasingly difficult for sane men to endure. The combat punch of man’s weapons has increased over 600% since World War II. These weapons are highly technical. High Explosive Plastic Tracers (HEP-T) send fragments of metal through enemy tanks and into humans at speeds faster than the speed of sound. The Starlight Scope is able to differentiate between males and females by computing differences in body heat given off by pelvic areas. The Beehive artillery ammunition (filled with three-inch long nail-like steel needles) is capable of pinning victims to trees. The world has a nightmare arsenal of terrible weapons advanced beyond the evolution of our morality.

### McCutcheon v. FEC DA: 2AC

#### SCOTUS heard oral arguments on McCutcheon in October and is expected to announce a decision imminently – there’s no risk that the aff would change the justices’ minds, this long after oral arguments they’re already well into the decision-writing phase of their process

Sullivan 10-8-13 (Sean, "Everything you need to know about McCutcheon vs FEC" www.washingtonpost.com/blogs/the-fix/wp/2013/10/08/supreme-court-takes-up-the-sequel-to-citizens-united/

The Supreme Court on Tuesday heard the case of Shaun McCutcheon v. Federal Election Commission. When the court issues its ruling, it could mark the most consequential campaign finance decision the since its landmark 2010 "Citizens United" ruling that eliminated the ban on corporate spending in elections.

**Huge number of hot-botton cases—either thumps the link or the internal to their specific case**

Marcia **Coyle**, “Fireworks Expecte at High Court,” NATIONAL LAW JOURNAL, **12—16**—13, [http://www.nationallawjournal.com/id=1202633249898/Fireworks%20Expected%20at%20High%20Court%3Fmcode=0&curindex=0&curpage=ALL#](http://www.nationallawjournal.com/id%3D1202633249898/Fireworks%20Expected%20at%20High%20Court%3Fmcode%3D0%26curindex%3D0%26curpage%3DALL)

As the U.S. Supreme Court begins a monthlong holiday recess, c**ourt watchers await the unwrapping of decisions in some of the term's hot-button cas**es.

The justices began the October 2013 term with two of its potentially biggest cases being argued in the first two weeks. But despite the early start, no decisions have been issued yet in the challenge to federal aggregate limits on campaign contributions in McCutcheon v. Federal Election Commission, and in Michigan's defense of its constitutional amendment banning racial preferences in education in Schuette v. Coalition to Defend Affirmative Action.

The term may seem a little blockbuster-light compared with back-to-back historic terms involving health care, immigration, same-sex marriages and voting rights. But ther**e are a number of headline grabbers and the new year brings two possible game changers for the executive branch.**

"This is an amazing time in the Supreme Court, with term after term the court deciding some of the most controversial and important questions facing society," said Erwin Chemerinsky, dean of the University of California, Irvine School of Law. "This term, **there are major issues about the separation of church and state and separation of powers and so much more**. For better or worse, this is a court that wants to take on the hardest and most important questions."

In January, **the court will hear the term's most significant political case** § Marked 09:41 § — a challenge to President Obama's use of the recess appointments power in **N**ational **L**abor **R**elations **B**oard **v.** Noel C**anning. And not yet scheduled are arguments in two cases related to the new federal health care law th**at raise the religious objections of for-profit business owners to providing contraceptive insurance coverage.

In the 34 cases already argued, the court has issued six signed decisions and two unsigned per curiam rulings. Not surprisingly, because it is still early in the term, the signed decisions and one per curiam have been unanimous.

The justices divided only in dismissing a closely watched labor case, Unite Here Local 355 v. Mulhall. That case asked whether neutrality agreements between an employer and union seeking to organize workers violate the Labor Management Relations Act. Justice Stephen Breyer wrote a dissent that justices Sonia Sotomayor and Elena Kagan joined.

"One of the most interesting aspects of the court's current caseload is how small it is, even by Roberts Court standards," said Carolyn Shapiro, director of the Institute on the Supreme Court of the United States at the Illinois Institute of Technology Chicago-Kent College of Law. "I am not one who thinks that the court should simply take cases to fill up their docket, but it is striking how few they currently have — and, even so, they have 'dismissed as improvidently granted' two cases already. As Justice Breyer pointed out in his dissent in Mulhall, that was not the court's only option."

The biggest news of the new term, ironically, has been in what the justices decided they did not want to do in three abortion-related cases. Last month, the justices turned away two Oklahoma cases involving abortion. They had granted review in the state's appeal of the invalidation of its law restricting the use of medication abortions. The Oklahoma Supreme Court struck down the law as violating U.S. Supreme Court abortion decisions.

In an unusual move, the justices, after granting review, asked the Oklahoma Supreme Court to clarify the meaning and effect of the law. After the state court responded, the justices dismissed the state's appeal, which left in place the state supreme court decision.

ULTRASOUND DECISION

In the second Oklahoma case, the justices denied review of another state supreme court decision striking down Oklahoma's law requiring doctors, an hour before an abortion, to perform an ultrasound, either vaginally or abdominally, and to describe "the dimensions of the embryo or fetus, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable."

However, abortion-rights advocates lost their effort to block part of a Texas law requiring physicians who perform abortions to have hospital admitting privileges within 30 miles of the abortion facility. They sought reinstatement of a stay while an appeal in a challenge to the law was pending in the U.S. Court of Appeals for the Fifth Circuit. Once that appeal is decided, the Texas case is likely to return to the high court on the merits.

What follows is a quick look at some of the more **significant cases awaiting decision or to be argued in 2014.**

• **Campaign finance/affirmative action. In McCutcheon**, watch to see whether the justices, for the first time, strike down limits on thus far sacrosanct limits on campaign contributions.

And, will they accept Michigan's arguments in **Schuett**e that voters can ban racial preferences in education and not violate equal protection? (Argued Oct. 8 and 15, respectively.)

• Revenge and power. The facts **in Bond** v. United States — a woman seeking revenge on a friend impregnated by the woman's husband — are soap-opera-ish, but **the legal issue is "serious business**," in the words of Solicitor General Donald Verrilli Jr. **Did Congress exceed its powe**r in enacting a law that implements a chemical weapons treaty but was used to prosecute Carol Bond for what usually would have been a state offense? (Argued Nov. 5.)

• **God and government**. In Town of Greece, N.Y. v. Galloway, the high court revisits prayers during government meetings. Thirty years ago, the justices upheld legislative prayers at the opening of Nebraska legislative sessions based on the nation's long history of legislative prayer. Will they do it again? (Argued Nov. 6.)

• **Traveling pollution**. In Environmental Protection Agency v. EME Homer City Generation, the EPA is appealing a D.C. Circuit decision striking down its so-called transport rule, designed to alleviate the tricky problem of cross-state air pollution. (Argued Dec. 10.)

• **Securities schemes**. It doesn't seem like a Supreme Court term without a securities case. Three consolidated cases (Chadbourne & Parke v. Troice; Proskauer Rose v. Troice; Willis of Colorado Inc. v. Troice) ask the justices whether the Securities Litigation Uniform Standards Act precludes a state-law class action alleging fraud that involves misrepresentations about transactions in covered securities. (Argued Oct. 7.)

• **Health insurance and religion**. No argument dates have been set yet for Sebelius v. Hobby Lobby Stores and Cones­toga Wood Specialty Corp. v. Sebelius. The for-profit company owners argue that their free exercise rights and the Religious Freedom Restoration Act are violated by the Affordable Care Act's inclusion of contraceptive coverage in employees' health insurance plans.

• **Recess fun?** The D.C. Circuit threw another major roadblock in the president's often-thwarted efforts to put his appointees into their positions. The court held that President Obama violated the Constitution's recess appointments clause with his recess appointments of three members of the National Labor Relations Board. The federal appellate court not only defined "recess" differently from the president, but also took a different view of when vacancies arise under that clause. (Arguments Jan. 13.)

• **Greenhouse gases**. Under attack by multiple industry groups is the EPA's decision that its authority to regulate greenhouse-gas emissions from new motor vehicles allows it also to regulate stationary sources that emit greenhouse gases. Six cases (beginning with Utility Air Regulatory Group v. EPA) have been consolidated for arguments on Feb. 24.

The court returns for arguments on Jan. 13, with the recess appointments clause case as its first argument of the new year.

**Empirics prove the Court doesn’t consider capital**

**Schauer 04** [Frederick, Law prof at Hravard, “Judicial Supremacy and the Modest Constitution”, California Law Review, July, 92 Cal. L. Rev. 1045, ln //uwyo-kn]

Examples of the effects of judicial supremacy hardly occupy the entirety of constitutional law. As the proponents of popular constitutionalism properly claim, it is simply not plausible to argue that all of the Supreme Court's decisions are counter-majoritarian, nor that the Court is unaware of the potential repercussions if a high percentage of its decisions diverges too dramatically from the popular or legislative will. Nevertheless, **there is no indication that the Court uses its vast repository of political capital only to accumulate more** political capital, and in many areas judicial supremacy has made not just a short-term difference, but a long-term difference as well. Perhaps most obvious is school prayer. For over forty years the Court has persisted in its view that organized prayer in public schools is impermissible under the Establishment Clause 59 despite the fact that public opinion is little more receptive to that view now than it was in 1962. 60 So too with flag burning, where the Court's decisions from the late 1960s 61 to the present have remained dramatically divergent from public and legislative opinion. 62 Or consider child pornography, where the Court's decision in Ashcroft v. Free Speech Coalition 63 flew in the face of an overwhelming congressional majority approving the extension of existing child pornography laws to virtual child pornography. Similarly, in the regulation of "indecency," **the Court has spent well over a decade repeatedly striking down acts of Congress that enjoyed overwhelming public and** [\*1059] **congressional support**. 64 Most dramatic of all, however, is criminal procedure, where the Supreme Court's decision in Dickerson v. United States, 65 invalidating a congressional attempt to overrule Miranda v. Arizona, 66 underscores the persistent gap in concern for defendants' rights between Congress and the public, on the one hand, and the Supreme Court, on the other.

**Winners win**

**Law 09** (David, Professor of Law and Professor of Political Science, Washington University in St. Louis, Georgetown Law Journal, March 2009, 97 Geo. L.J. 723; “A Theory of Judicial Power and Judicial Review,” Lexis, rwg)

Part IV of this Article discusses a counterintuitive implication of a coordination-based account of judicial power. **Conventional wisdom suggests that courts secure compliance with their decisions by drawing upon their store of legitimacy, which is undermined by decisions that are unpopular, controversial, or lack intellectual integrity. n25 Part IV argues that precisely the opposite is true: an unpopular or unpersuasive decision can, in fact, enhance a court's power in future cases, as long as it is obeyed. Widespread compliance with a decision that is controversial,** unpopular, or unpersuasive **serves only to strengthen the widely held expectation that others comply with judicial decisions. This expectation, in turn, is self-fulfilling**: those who expect others to comply with a court's decisions will find it strategically prudent to comply themselves, and the aggregate result will, in fact, be widespread compliance. Part IV illustrates these strategic insights--and the Supreme Court's apparent grasp of them--by contrasting [\*734] Bush v. Gore n26 with Brown v. Board of Education n27 and Cooper v. Aaron. n28

**Issues are compartmentalized**

**Redish and Cisar 91** prof law @ Northwestern and Law clerk to US Court of Appeals, 1991

(MARTIN H. REDISH, prof law and public policy @ Northwestern; ELIZABETH J. CISAR, Law Clerk to Chief Judge William Bauer, United States Court of Appeals, Seventh Circuit, Dec 1991, “CONSTITUTIONAL PERSPECTIVES: ARTICLE: "IF ANGELS WERE TO GOVERN" \*: THE NEED FOR PRAGMATIC FORMALISM IN SEPARATION OF POWERS THEORY.”41 Duke L.J. 449)

**Choper's assumption that the judiciary's institutional capital is transferable from structural cases to individual rights cases is no more credible**. Common sense should tell us that **the public's reaction to con- troversial individual rights cases**-for example, cases **concerning abor- tion**,240 school prayer,241 busing,242 **or criminal defendants' rights**243- **will be based largely, if not exclusively, on the basis of its feelings con- cerning those particular issues. It is unreasonable to assume that the public's acceptance or rejection of these individual rights rulings would somehow be affected by anything the Court says about wholly unrelated structural issues.**

**Decision is announced in May, after the DA**

**SCOTUS 12** (Supreme Court of the United States, 7/25/2012 “The Court and Its Procedures,”

http://www.supremecourt.gov/about/procedures.aspx, Accessed 7/25/2012, rwg)

**The Court maintains this schedule each Term until all cases ready for submission have been heard and decided. In May and June the Court sits only to announce orders and opinions.** The Court recesses at the end of June, but the work of the Justices is unceasing. During the summer they continue to analyze new petitions for review, consider motions and applications, and must make preparations for cases scheduled for fall argument.

#### Tea Party doomed—regional differences

Colin Woodward, “Regional Differences Have Doomed the Tea Party,” WASHINGTON MONTHLY, 10—15—13, <http://www.washingtonmonthly.com/ten-miles-square/2013/10/regional_differences_have_doom047323.php>

Regular readers of the Monthly may recall my piece two years ago, “A Geography Lesson for The Tea Party”, which argued that movement was doomed in much of the country and would become isolated in the South and interior West, the only parts of the country where its agenda would find fertile soil. And so it has come to pass. A tiny faction in the U.S. House - numbering less than a tenth of its membership - has driven the Republican Party and the nation over a small cliff (the government shutdown) and is headed for the edge of a far larger one (a federal default.) Polls show these actions by the “shutdown caucus” have already done serious damage to the G.O.P and Tea Party brands, even as most of its members remain popular in their own districts. Where are those districts? In the South and the interior West. The Atlantic recently cross referenced the roster of House members the Senate Conservative Fund identified as their allies with the 80 signatories of an August letter demanding that Boehner use the threat of a shutdown to defund the Affordable Care Act. The result was a list of 32 tea party hardliners who arguably represent the core of the shutdown caucus. Twenty-six - over 80 percent of the group - were elected from the centuries-old cultural regions I call the Deep South, Greater Appalachia, and Far West - regions which together account for just a third of the U.S. population. Those same nations also brought us Rand Paul (Appalachia), Ted Cruz, Jim DeMint, and Tom DeLay (all Deep South) and most other leading lights of the tea party. There are tea party supporters everywhere, but only in these three cultural regions have they managed to achieve real and lasting political success. This is because their platform - to slash taxes, labor protections, environmental regulations, social programs, and the reach and authority of the federal government — is in accord with the centuries-old cultural ethos of each of these regions, and anathema to those elsewhere. Several § Marked 09:41 § commentators have drawn parallels between the actions of the “shutdown caucus” and those of 19th century Confederate nullifiers and secessionists, Dixie minorities who were willing to burn the federal government down to get their way. In regards to the Deep South, they’re onto something. This is a region founded by West Indies slave plantation owners, men who cherished and fought for a form of classical Republicanism modeled on Ancient Greece and Rome, where a privileged minority enjoyed liberty and democracy, and slavery was the natural lot of the many. The agenda of the Deep Southern oligarchy has been consistent for more than three centuries: to control and maintain a one party state with a colonial-style economy staffed by a compliant, low-wage workforce with as few labor, workplace safety, health care, and environmental regulations as possible. Its slave and racial caste systems have been smashed by outside intervention, but its representatives in Washington have continued to fight to reduce federal power, taxes on the rich, and rolling back labor and environmental protection, and social service programs. Not coincidently, these are also the central goals of the tea party caucus. Greater Appalachia - home to nearly half of the shutdown hardliners - was founded by a very different group of people: settlers from the war-ravaged borderlands of northern England, lowland Scotland and (especially) Northern Ireland. In this culture, “freedom” is about maximizing the autonomy of the individual and freeing each person from outside encumbrances. There was little love here for the aforementioned Deep Southern oligarchs - indeed, the region sided with the Union in the Civil War for this very reason. But since Reconstruction, the federal government has appeared the greatest threat, imposing communitarian-minded innovations like income taxes, the Civil Rights Act, cap and trade and, of course, ObamaCare. A similarly libertarian political culture took root in the Far West - which includes the high plains and Rocky Mountains, but not the Spanish-settled borderlands and Pacific coastal plain - a region dependent on and resentful of the federal government, which owns much of the land. Here the Tea Party stands a chance. Vast regions of our country have a far more communitarian political heritage, however. Take Yankeedom, a region first colonized by the New England Puritans and their descendants, which encompasses New England, Upstate New York, Ohio’s Western Reserve, and the Upper Great Lakes states. Since the 1630s, Yankee culture has emphasized individual self-denial for the common good, investment in strong public institutions, and governmental projects to improve society. Not surprisingly, the tea party has fared poorly here. The shutdown caucus has just two members from this region of 53 million. Its leader, Michelle Bachman last year won reelection by just one percent of the vote in the most Republican district in Minnesota. The other, Justin Amash, is in serious hot water back in his Michigan district, where local business leaders want to mount a primary challenge from the center. The caucus doesn’t have a single member from the (Yankee-influenced) Left Coast, and just one from the Dutch-founded region around the Big Apple: Scott Garrett of New Jersey who, like his Yankee colleagues, now has a lot of unhappy constituents. Together, these three communitarian-minded nations account for a third of the U.S. population, but only six percent of Tea Party caucus. After the next election cycle, there may not be any at all.

**No protectionism**

**Anderson 9 (Jonathan, Head of the Asia-Pacific Economics for UBS, “Economist: Reality Check for Prophets of Protectionism,” 8-17,** [**http://english.caijing.com.cn/2009-08-17/110225722.html**](http://english.caijing.com.cn/2009-08-17/110225722.html)**)**

Now, here we are again, at the beginning of what some commentators call the "Great Depression II." And according to the World Trade Organization, we are seeing a sharp uptick in protectionist measures around the world. **Are we risking another wave of trade destruction** that closes the world's doors? And could a new wave crush China and the rest of the emerging world**? The short answer is no.** We do not worry much about the **protectionism** issue. We think **these fears are vastly overstated for four reasons. First, conditions in the global economy are not that bad.** If we look back at the Great Depression in the 1930s, we find the United States economy contracted nearly 30 percent in real terms, and more than a quarter of the entire workforce was unemployed. Up to one-third of the economy simply disappeared. In many European economies, the impact was greater still. How do things look today? At last count, the United States, euro zone countries, and Japan had seen a cumulative GDP contraction of 6 percent or so, with average unemployment nearing 9 percent. And this is probably as bad as it will get; the world economy is now expected to stabilize and recover in the second half of 2009. Of course, the recovery may be extremely weak. But even if developed countries don't grow at all over the next 18 months, the situation still compares favorably with the events of 75 years ago. In other words, **there's just no reason to look for the same kind of protectionist reaction today**. We should add that we're not seeing it. The WTO has reported a sharp increase in various protectionist actions, claims and cases, but the overall economic impact of these measures is still small by any standard. **This is likely to be the worst it will get. Second, the effects of "plain vanilla" protectionism are highly exaggerated.**Although Smoot-Hawley passed in 1930, raising tariffs on thousands of products, most economists agree the real attack on global trade didn't come until the breakup of the international monetary and exchange rate arrangements in 1931, and a corresponding collapse of global finance. Of course, many pundits now worry about the fall of the U.S. dollar as a global invoicing and reserve currency, and that this could have a similarly negative impact on trade and financing. However, we should stress that as bad as the U.S. economy looks at present, it's still the best thing we have. The European Union is beset by crushing regional disparities and political pressures, with significant basket cases hiding inside its borders. Japan simply doesn't have the necessary dynamism or commitment to globalization. And as far as fiscal balance sheets are concerned, all three major regions have equally significant problems. The United States stands alone in terms of how fast the Federal Reserve has expanded its monetary balance sheet, raising specific concerns about U.S. inflation and its impact on the dollar. But as one can see by looking at U.S. economic data, we are still falling into a deflation cycle for the time being, with nary a hint of inflationary pressure yet. We fully expect the Fed to be able to rein in the monetary expansion quickly if these pressures arise. We should add that, **although it's fashionable to look at China and the yuan as a rising competitor to the dollar, this is simply not a realistic theme for the next 10 years – and perhaps for much longer**. China doesn't have an open capital account, which means there is little opportunity or interest in holding the yuan as a serious asset. If anything, the impact of the current global crisis is likely to convince mainland authorities to be slow in opening their borders. China also doesn't have the kind of deep, domestic financial markets required of a global reserve currency; the bond market in particular is still in its infancy. As a result, it will be a long time indeed before the yuan starts playing a real role on the global stage. **Third, even if we do see an unexpected wave of protectionism, emerging countries have less to lose than the developed world.** Let's start by asking this question: **When we talk about "protectionism,"** what exactly are we trying to protect? **The answer is,** of course, domestic workers and domestic jobs. In what areas do the labor forces of the United States, Europe and Japan work? **The vast majority are in services and construction, sectors that don't compete much directly on the international arena. Only 10 to 15 percent are manufacturing jobs**, and these are mostly in capital intensive, high-tech industries such as autos, precision machinery and high-end electronics. By contrast, manufactured goods that China and other emerging markets sell – toys, textiles, running shoes, sporting goods, light electronics, etc. – are barely made at all in the G3 countries. **Rich countries outsourced most of these low-end, labor-intensive jobs a long time ago.**A related point holds for commodities and raw materials, which make up much of the rest of the exports from the low-income world. **All three major, developed regions are heavily dependent on imported resources, and this is unlikely to change in the foreseeable future.** The bottom line here is that even if we do get a big wave of protectionism in developed countries, it unlikely to be aimed specifically at low-end goods from the developed world. Rather, it makes more sense to protect the auto industry along with high-end equipment and chemical manufacturers. Moreover, any tariffs and barriers placed on toys and textiles are much more likely to raise consumer prices than crush volumes, given the absence of competitive domestic industries that could take advantage of protection to grab local market shares. The final point concerns financial leverage. There has never been a time in recent global economic history when the developed world was so dependent on low-income countries for financial resources. For the first time, the emerging world is a net financial creditor. Given the rapid expansion of public debts, the major developed countries are extremely interested in seeing China and other low-income countries continue to buy U.S. Treasuries, Japanese Government Bonds and various European debt instruments. The impact of a big, potential pullout from global bond markets actually could be much more negative than positive in terms of protecting domestic industries. So emerging markets now are in a much better bargaining position than at any time in the past.

### Battlefield DA: 2AC

**Rule of law on the battlefield is key to 21st century warfighting—COIN operations, allied efforts, and asymmetric threats all require a new approach**

**Bahar 09** (Michael, Lieutenant in the U.S. Navy Judge Advocate General’s (“JAG”) Corp and an adjunct professor at NYU’s Wilf Family Department of Politics, January 2009, "As Necessity Creates The Rule: Eisentrager, Boumediene, And The Enemy"How Strategic Realities Can Constitutionally Require Greater Rights For Detainees In The Wars Of The Twenty-First Century" Journal of Constitutional Law) https://www.law.upenn.edu/journals/conlaw/articles/volume11/issue2/Bahar11U.Pa.J.Const.L.277(2009).pdf

As the Army and Marine Corps' own doctrine now makes clear, **military necessity in** counterinsurgency ("**COIN**") **campaigns** of the type fought in Iraq and Afghanistan **now require** "[**establishing** the **rule of law**" over there, **as well as** die **impartial application and respect for the law in the U**nited **S**tates. As one of its key "unsuccessful practices" of counterinsurgencies, the Field Manual lists: "Ignore peacetime government processes, including legal procedures." **The Field Manual** also **wisely warns that** "[a]ny **human rights abuses or legal violations by U.S. forces quickly become known throughout the local populace and eventually around the world**." **These actions "undermine" the war effort**, both in the "long- and short-term.""1 Each of the major U.S. Supreme Court decisions on the extension of rights to enemies have thus far turned on the dangers involved in extending rights, even while they more recently have resisted at- tempts to curtail those rights. It has been left to the dissents, as in Yamashita, to sound the alarm of what will happen when rights are not extended: The high feelings of the moment doubtless will be satisfied. But in the sober afterglow will come the realization of the boundless and dangerous implications of the procedure sanctioned today. No one in a position of command in an army, from sergeant to general, can escape those implications. Indeed, the fate of some future President of the United States and his chiefs of staff and military advisers may well have been sealed by this decision. But even more significant will be the hatred and ill-will growing out of the application of this unprecedented procedure. Even the Israeli Supreme Court, which upheld restrictions on its military despite powerful arguments of necessity, acknowledged that the restrictions it was imposing handcuffed the military. ' "That is the fate of democracy," Justice Barak wrote in a 1999 case involving interrogation methods, which he then cited in a 2007 case involving targeted killings.'\*' "[I]n [democracy's] eves not all means are per-mitted, and . .. not all the methods used by her enemies are open." At times, "democracy fights with one hand tied behind her back."19" Justice Barak comes closest to realizing the affirmative value of law, but his peroration stops short of recognizing the positive pragmatics or the strategic value of law: Despite that, democracy has the upper hand, since preserving the rule of law and recognition of individual liberties constitute an important component of her security stance. At the end of the day, they strengthen her spirit, and allow her to overcome her difficulties. **The Field Manual**, written by military officers including the general who would go on to lead the U.S. war in Iraq and would ultimately be selected to assume military responsibility over the entire region, **demonstrates that upholding the law not only reminds the counterin-surgents of who they are and what they are fighting for, but it accomplishes a strategic imperative. American generals are not alone in this view.** For example**, British general** Sir Rupert **Smith**, former commander of the British Armoured Division in the first Gulf War in 1991 and later the leader for UNPROFOR, the U.N. Protection Force in Bosnia, **states that "if we are to operate amongst the people . . . we must do so within the law. To do otherwise is to attack the essence of our own strategic objective**, which is to establish and uphold the law. A. Lawyers as Tactical Commanders? **Legal adherence**, as many prominent commentators have argued, **does not necessarily attach a yoke on America's power**. In his Foreign Affairs review of General Wesley Clark's book on the Balkan Wars, Richard Betts, for example, decried the role of law and lawyers in the Kosovo campaign as well as in military interventions in general.'\* He asserts that "[t]he hyperlegalism applied to NATO's campaign made the conflict reminiscent of the quaint norms of premodern war."200 Further, he alleges that "lawyers constrained even the preparation of options for decisive combat" and declares: **One of the most striking features of the Kosovo campaign**, in fact, **was the remarkably direct role lawyers played in managing combat operations**—to a degree unprecedented in previous wars. . . . The role played by lawyers in this war should also be sobering—indeed alarming—for devotees of power politics who denigrate the impact of law on international conflict. . .. . . . NATO's lawyers . . . became, in effect, its tactical commanders." In his thoughtful and balanced analysis of "lawfare"—i.e., the use of law as a weapon of war against the United States—Major General Charles Dunlap is less pessimistic about the law of armed conflict's ability to limit U.S. power, but he concludes that while the role of the law and lawyers in the U.S. military exists for practical and altruistic reasons, "there is disturbing evidence that the rule of law is being hijacked into just another way of fighting (lawfare), to the detriment of humanitarian values as well as the law itself." While law no doubt constrains the tactical use of American power—and America's enemies certainly can use its respect for the law against it in the short term—the field Manual demonstrates that **the top military commanders now understand law to be essential to maximizing the strategic use of American power in twenty-first century conflicts. Force is still necessary, but it must be used with restraint, discrimination, and in strict compliance with the laws of war, or it "risks generating popular resentment, creating martyrs that motivate new recruits, and producing cycles of revenge**.""" While the Field Manual is not the last word in twenty-first century military strategy,"'" and while warfare will always evolve and great power struggles will rise again, **the time for knee-jerk antipathy towards law** on a stra-tegic level **is over.** B. The Fuller Range of Benefits And even the Field Manual itself does not fully account for the full range of benefits adherence to law provides. For example, **law and legal procedures force actors to think; they allow actors to practice pre-planned responses or "PPRs"; they force actors, including the President, to internalize costs of their actions; and of course, they restrain all actors from going too far. Law is also a trip wire, signaling to actors that some value is worth protecting, and if they continue on that path, it better be for a good reason. Historically, this country has looked back in shame and horror at some of its wartime excesses, be they the internment of Japanese-Americans** during World War II" **'or the** thousands of Americans who lost their livelihoods, reputations, and even freedom during the **McCarthy era. Courts could have prevented these** baleful and counterproductive **events by interposing themselves more to enforce the appropriate legal hurdles**.""7 Finally, while high-level Bush administration lawyers like David Addington and influential commentators like Robert KaganJIW still view "law and force as antonyms,"\* and while many still assert that the United States can operate independently of allies, the realities of Iraq. Afghanistan, and the overall war on terror have proven otherwise. **Adherence to the law is key to obtaining partners. As** § Marked 09:42 § Stephen **Walt has** persuasively **argued, "[w]hen foreign populations disapprove of U.S. policy and are fearful of U.S. dominance, their governments are less likely to endorse Washington's initiatives and more likely to look for ways to hinder them**."\* The experiences of Matthew Waxman, one of the Bush administration's key national security lawyers and now a professor at Columbia Law School, reinforce this point. Using the Guantanamo Bay detention facility as an example, he writes that the "widespread perception that it exists simply to keep detainees forever beyond the reach of the law" is "a drag on America's ... global counterterrorism efforts," hampering "cooperation with our friends on such critical counterterrorism tasks as information sharing, joint military operations and law enforcement." \* "I know," he continues, "[a]s a State Department official, I often spent valuable time and diplomatic capital fruitlessly defending our detention practices rather than fostering counterterrorism teamwork.""'\* **The U**nited **S**tates **may be able to topple a country by itself with shock and awe, but it cannot win the peace, or keep its borders safe, without international involvement.**" Germany's summer 2007 arrest of Islamic militants allegedly planning to target the United States demonstrates this point. ' The Field Manual and **high-level national security documents also recognize the essential force multiplier of coalition involvement.** As President George W. Bush's National Strategy for Maritime Security rightly concludes: [E]vcn an **enhanced national effort is not sufficient**. The challenges that remain ahead for the United States, the adversaries we confront, and the environment in which we operate compel us to strengthen our ties with allies and friends and to seek new partnerships with others. Therefore, inteniational cooperation is critical to ensuring that lawful private and public activities in the maritime domain are protected from attack and hostile or unlawful exploitation. **Maximizing coalition involvement requires maximizing adherence to U.S. and international law.** V. 1 HE BATTLEFIELD PRESUMPTION With the Field Manual, law and strategy are now officially and doc-trinallv aligned. In Guantanamo Bay, facts of sovereignty and modern technology' indicate that there is nothing impractical or anomalous about at least giving detainees the right to contest their status as enemies. The Constitution requires that courts recognize strategic and pragmatic realities and, where appropriate, expand the application of certain constitutional provisions to U.S. enemies and those the government captures in the global struggle against terrorism. But this is not to say that the constitutional extension should be in constant flux, or that a court should scrutinize the nature of a conflict too soon or interject itself too much. Rather, this Article posits a careful battlefield presumption within the context of a general wartime jurisprudence. Instead of debating whether law should apply in the "new paradigm," as Justice Thomas puts it,2" it is better to design appropriate rules to maximize the chances for peace based on the best possible American terms, which includes optimizing the extension of constitutional principles. Boumediene explicitly opened the door for this battlefield jurisprudence. Justice Kennedy stated: In cases involving foreign citizens detained abroad by the Executive, it likelv would be both an impractical and unprecedented extension of judicial power to assume that habeas corpus would be available at the moment the prisoner is taken into custody. If and when habeas corpus jurisdiction applies, as it does in these cases, then proper deference can be accorded to reasonable procedures for screening and initial detention under lawful and proper conditions of confinement and treatment for a reasonable period of time. Domestic exigencies, furthermore, might also impose such onerous burdens on the Government that here, too, the Judicial Branch would be required to devise sensible rules for staying habeas corpus proceedings until the Government can comply with its requirements in a responsible way. At the far end of the spectrum, enemies captured on the battlefield should have a constitutional right to contest their status as enemies and combatants."1\* But **even battlefield captures and seizures should not necessarily be subject to a categorical denial of all other constitutional privileges since**, as the top military officers make clear, **U.S.** militan1 **policy is better off with a certain degree of law.** Rather, precedent dictates that the United States should adjust the extension of rules based on the strategic and practical implications of doing so. And, **as the detained individual moves away from the constitutional, state-based understanding of an enemy, his level of due process protections should increase the further away he is from the battlefield.** Professors Fallon and Meltzer have produced a magisterial work which provides a sound analytical framework for sorting out "the tangle of jurisdictional, substantive, procedural, and scope-of-review issues that habeas cases often present"" Much of that framework turns on the individual's status as an alien or citizen, and on his or her place of capture and detention. Methodologically, their article also advocates a common law-like approach to habeas adjudication under which courts must exercise responsible judgment in adapting both statutory and constitutional language to "novel circum- nXtl stances. What they do not fully appreciate, however, is that a common lawlike approach is not necessary because the original understanding of the Constitution and the precedent permit strategic and pragmatic assessments. Decision-making in this context comes closer to what Fallon and Meltzer call the "Agency Model,""" as strictly "applying the law, not making it\*\*"" permits the evaluation of pragmatic and strategic circumstances. Fallon and Meltzer also do not fully appreciate the paradigmatic shift in the strategic realities which can accommodate a larger expan- sion of rights than they anticipate. They view Eisentrager as rightly decided so long as it stands for the proposition that aliens detained abroad "generally" have no constitutional right to habeas, but that the possibility is left open that "a small subset of aliens might have sufficient contacts with the United States to possess both substantive constitutional rights and a constitutional right of access to a court to assert those rights."'4 As an extension of that argument, they proffer a batdefield rule with regard to citizens. They write that "[wjithout attempting to anticipate even' imaginable scenario, we would follow this general principle: the central distinction for purposes of appraising the legality, and ultimately the constitutionality, of executive de-tendons of American citizens is between battlefield and nonbattle-field contexts, not between seizures at home and those abroad.""5 Bowing to the stories of battlefield exigencies, they posit that "[i]n all nonbattlefield cases, seizure and detention of citizens should rest on evidence that has been carefully assembled and is reasonably capable of being maintained."' But this principle can be extended even further. **Fallon and Meltzer operate under the implicit assumption that the military is distinct from the police force, in both function and capacity.** Their position that, in "all nonbatdefield cases," the seizure and detention of citizens should rest on evidence that has been carefully assembled and is reasonably capable of being maintained, implies that such careful assembly is not possible in the military context. "**Imagine moving detainees, witnesses, or lawyers around in Baghdad today to develop evidence for a habeas proceeding**,"227 **they ask. But this sharp divide between military and police actions is not necessarily true on the twenty-first century battlefield. As the Field Manual states: "In counterinsurgencies, warfighting and policing are dynamically linked**.""" **While there is a clear difference between warfighting and policing**. . . [**counterinsurgency] operations require that every unit be adept at both and capable of moving rapidly be- tween one and the other.**wB9 The Field Manual also reminds operators that every insurgent is a "criminal suspect[]" and thus evidence must be properly documented and preserved.\*\*0 **In the asymmetric battlefield of this century, the traditional military functions are being increasingly fused with the police functions, even outside of the strict counterinsurgency context.** As I have demonstrated elsewhere, **the Navy, for example, is being increasingly called upon to police the seas against pirates, maritime terrorists, and traffickers in illicit materials** by sea."\*1 **Given this reality**, and drawing on my own experiences capturing and detaining Somali pirates, I have argued that **the U**nited **S**tates **should design procedural rules for the at-sea or battlefield capture rather than either assume**, or take the position, **that no procedural rules apply**."\*" While the Patriot Act\*\*\* is highly controversial, and many of its provisions have not been fully tested in the courts, it nevertheless demonstrates that the United States is alreadv tailoring procedural rules to accommodate certain realities. For example, the Patriot Act authorizes the Attorney General to detain any alien whom he "has reasonable grounds to believe" is "described in" certain sections of United States Code."1 These code sections "describe" aliens who: (1) "seek[] to enter the United States" to "violate any law of the United States relating to espionage or sabotage" or to use "force, violence, or other unlawful means" in opposition to the government of the United States; (2) have "engaged in a terrorist activity;" or (3) the Attorney General believes are "likely to engage after entry in any terrorist activity," have "incited terrorist activity," are "representative[s]" or "member[s] of a terrorist organization" or are "representative[s]" of a group that "endorses or espouses terrorist activity," or have "received military-type training" from a terrorist organization.m But, it requires that the Attorney General step through procedural checks. The Act expressly prohibits unlimited indefinite detention and requires the Attorney General to begin removal proceedings "not later than 7 days after the commencement of such detention.""\*" If a terrorist alien's removal is "unlikely in the reasonably foreseeable future," he may be detained for additional periods of up to six months if his release will "threaten the national security of the United States."2" Regardless of one's views on the overall constitutionality (or advisability) of the Patiiot Act, it is worth pointing out that many rules of criminal procedure are prophylactic rules designed to protect the underlying constitutional provision. They can be adjusted. Take, for example, the rules requiring a warrant prior to arrest, or a forty-eight-hour probable cause determination subsequent to an arrest without a warrant. These rules were designed to ensure the full protection of the Fourth Amendment." In the military, these rules are slightlv different to reflect military necessities, but they are still designed to protect an individual's Fourth Amendment rights. The military has a fortv-eight-hour probable cause determination,"\*\* a seventy-two-hour requirement for a command memorandum detailing the probable cause for pretrial restraint,"10 and the initial review officer's ("IRO's") independent determination of probable cause."" **If the rules can be constitutionally adjusted to reflect military necessities at home, they can be adjusted to reflect military necessities on the expanding battlefield.** After all, in addition to rejecting the proposition that a probable cause hearing is only prompt under Cer-stein when provided "immediate [ly]" upon completion of the "administrative steps incident to arrest,""'" **McLaughlin allows the Government to demonstrate "the existence of a bona Fide emergency or other extraordinary circumstance" which caused it to hold a probable cause determination beyond forty-eight hours**."4\* The fact that a de-tendon may take place on the high seas, for example, could qualify as an "extraordinary circumstance." Accordingly, **the military has a specific "at sea" exception to its normal procedural requirements."** Most importantly, however, **there is a precise constitutional provision which specifically authorizes the Congress not only to declare war, to wage imperfect or limited warfare via letters of marque and reprisal**,"15 **but also to "make Rules concerning Captures on Land and Water.** Fallon and Meltzer are correct that exigencies and practical considerations should afford a more tailored, if not tiered, jurisprudence. Their argument, however, misses the fact that this tailoring does not require a shift to a common law-like approach to judging because it is already required by the Constitution and such precedent as Eisentrager, Milligan (which also confirms the Framers' original, pragmatic intentions), and McLaughlin. Their argument also misses the practical and strategic shift in which battlefield realities now increasingly require greater expansion of rights. Matthew **Waxman has correctly called for an end to the debate between "those who say that only traditional habeas corpus rights to a fair hearing can sort out these cases and those who say that nonciti-zen enemy fighters captured abroad in wartime have never been entitled to their day in court." We would "all be better off," he urges, "forging a broad agreement about the minimum acceptable conditions for any long-term detention process, firmly within the rule of law**."" The positive pragmatic principle is the vehicle through which we can forge this new agreement, firmly within the rule of law.

**Iraq and Vietnam disprove the link**

**National Institute of Military Justice**, Amicus Brief, Rasul v. Bush, 2003 U.S. Briefs 334, January 14, 20**04**, p. 12-13.

**The experience of U**nited **S**tates **armed forces** in combat **belies the Government's** expressed **concern that judicial review of the claims of combatants "would interfere with the President's authority** as Commander in Chief." (Opp. at 11) **Courts-martial, prisoner status determinations, and other legal processes have been a regular adjunct of American wartime operations** throughout the **period since Eisentrager. During** the **Vietnam** era, **the U**nited **S**tates **Army held** approximately **25,000 courts-martial in the war theater.** In 1969 alone, 7691 of these were special and general courts-martial, which are trials presided over by a military judge in which the defendant is entitled to a panel equivalent to a jury as provided in the UCMJ. Frederic L. Borch, Judge Advocates In Combat: Army Lawyers in Military Operations from Vietnam to Haiti 29 (2001). Another 1146 special and general courts-martial were held in Vietnam by the Marine Corps in 1969. In addition, still only in 1969, the Army held 66,702 less formal disciplinary proceedings under Article 15 of the UCMJ, 10 U.S.C. § 815. Id. . The United States Military Assistance Command in Vietnam enforced strict requirements for the classification of captured personnel, including providing impartial tribunals to determine eligibility for prisoner of war status. Military Assistance Command Vietnam, Directive No. 381-46, Annex A (Dec. 27, 1967) and Directive No. 20-5 (Sept. 21, 1966 as amended Mar. 15, 1968.) . During the 1991 Persian Gulf War, the status of approximately 1200 detainees was determined by "competent tribunals" established for that purpose. Dep't of Defense, Final Report to Congress: Conduct of the Persian Gulf War 578 (1992); Army Judge Advocate General's School, Operational Law Handbook 22 (O'Brien ed. 2003). . At this very time, **U**nited **S**tates **forces in Iraq, a theater of actual combat, are providing impartial tribunals** compliant with Article 5 of the GPW to adjudicate the status of captured belligerents. Although details are difficult to come by, American commanders of forces in Iraq acknowledge that as many as 100 prisoners there have had their status adjudicated by impartial tribunals under Article 5 of the GPW.

#### Proportion of released prisoners who return to militant activity is very low

Laura **Pitter**, senior counterterrorism researcher, Human Rights Watch, Statement before the Senate Judiciary Committee, 7--31--**13**, http://www.hrw.org/news/2013/07/31/written-statement-human-rights-watchs-laura-pitter-us-senate-committee-judiciary, accessed 8-15-13.

Those seeking to keep Guantanamo open often cite concerns that detainees released from Guantanamo may engage in terrorism. The Office of the Director of National Intelligence (DNI) has stated that some detainees released from Guantanamo then become involved in terrorist activities, though the number is disputed and the government refuses to publicly release the information on which it is basing those claims. The DNI claims that about 17 percent of the approximately 600 people released from the facility over the past 12 years are “confirmed” and 13 percent are “suspected” of having engaged in terrorism after their release.[1] However, independent, credible analyses of those figures[2] by researchers at the New America Foundation indicate the actual percentage is closer to 2.8 percent “confirmed” and 3.5 percent “suspected” of engaging in militant activities against US targets and another 2.5 percent against non-US targets.[3] This amounts to 8.8 percent confirmed or suspected to have taken part in any form of militant activity anywhere in the world.[4] Even if the government figures were true, clearly the vast majority of people released from Guantanamo have not engaged in terrorism; in fact, it's well below the 68 percent[5] recidivism rate found by a Bureau of Justice Statistics study of recidivism after general criminal convictions in 15 states.[6] There are many people in the world who may commit crimes in the future, but the United States has not locked them up indefinitely. The bottom line is that the administration needs to assume some risk that those released may become involved in terrorism – even though that risk is objectively low. And that risk must be balanced against the harm to national security that occurs every day that Guantanamo remains open.

**No North Korea impact**

Paul **Stares**, CFR Center for Preventive Action Director and Conflict Prevention Senior Fellow, 8/12/20**10**, “Handling Tensions on the Korean Peninsula," http://www.cfr.org/publication/22788/handling\_tensions\_on\_the\_korean\_peninsula.html, access 12/7/2010

Other than **firing** some coastal **artillery and detaining a South Korean fishing boat** that recently strayed into North Korea waters, **Pyongyang has responded** primarily **with belligerent rhetoric and apocalypticwarnings. The recent ROK-U.S. naval exercises**, for example, **elicited threats of a "retaliatory sacred war." But** by historical standards, **such bombast is unexceptional. The recent North Korean provocations also pale in comparison to earlier attacks and skirmishes**, most notably during the late 1960s when, among other things, the Blue House--South Korea's presidential residence--was attacked, or in the 1980s when the South Korean cabinet was bombed during a visit to Burma.

**These far-worse periods of inter-Korean tensions never ignited another war, and the incentives to prevent this from happening are even greater today. South Korea fears losing its hard-won prosperity, while a much weaker North knows that it would never survive another major conflict.**

**No Iran prolif impact**

**Pinker, 11** [Steven, professor of psychology at Harvard University, *The Better Angels of our Nature Why Violence Has Declined*, ISBN: 067002295, for online access email alexanderdpappas@gmail.com and I will forward you the full book]

**If** current **pundits are to be believed**, **then as you are reading these words the New Peace will already have been shattered by a major war**, **perhaps a nuclear war, with Iran**. **At the time of this writing, tensions have been rising over the country’s nuclear** energy **program**. Iran is currently enriching enough uranium to fashion a nuclear arsenal, and it has defied international demands that it allow inspections and comply with other provisions of the Nuclear Nonproliferation Treaty. The president of Iran, Mahmoud Ahmadinejad, has taunted Western leaders, supported terrorist groups, accused the United States of orchestrating the 9/11 attacks, denied the Holocaust, called for Israel to be “wiped off the map,” and prayed for the reappearance of the Twelfth Imam, the Muslim savior who would usher in an age of peace and justice. In some interpretations of Shi’a Islam, this messiah will show up after a worldwide eruption of war and chaos. **All this is, to say the least, disconcerting, and many writers have concluded thatAhmadinejad is another Hitler who will soon develop nuclear weapons and use them on Israel or furnish them to Hezbollah to do so**. Even in less dire scenarios, he could blackmail the Middle East into acceding to Iranian hegemony. **The prospect might leave Israel or the United States no choice but to bomb its nuclear facilities preemptively**, **even if it invited years of war and terrorism in response. A 2009 editorial in the** *Washington Times* **spelled it out: “War with Iran is now inevitable. The only question is: Will it happen sooner or later**?”279 **This chilling scenario of a nuclear attack by Iranian fanatics is certainly possible. But is it** *inevitable***, or even highly likely?** One can be just as contemptuous of Ahmadinejad, and just as cynical about his motives, while imagining less dire alternatives for the world ahead. John Mueller, Thomas Schelling, and many other foreign affairs analysts have imagined them for us and have concluded that **the Iranian nuclear program is not the end of the world**.280 **Iran is a signatory to the Nuclear Nonproliferation Treaty, and Ahmadinejad has repeatedly declared that Iran’s nuclear program is intended only for energy and medical research.** In 2005 Supreme Leader **Khameini** (**who wields more power than Ahmadinejad**) **issued a fatwa declaring that nuclear weapons are forbidden under Islam**.§ Marked 09:43 § 281 **If thegovernment** went ahead and **developed the weapons anyway, it would not be the first time in history that national leaders have lied through their teeth**. **But having painted themselves into this corner, the prospect of forfeiting all credibility in the eyes of the world** (**including major powers on whom they depend**, like Russia, China, Turkey, and Brazil) **might at least give them pause**. **Ahmadinejad’s musings about the return of the Twelfth Imam do not necessarily mean that he plans to hasten it along with a nuclear holocaust**. **Two of the deadlines by whichwriters confidently predicted that he would set off the apocalypse (2007 and 2009) have already come and gone**.282 And for what it’s worth, here is how he explained his beliefs in a 2009 television interview with NBC correspondent Ann Curry: *Curry:* You’ve said that you believe that his arrival, the apocalypse, would happen in your own lifetime. What do you believe that you should do to hasten his arrival? *Ahmadinejad:* I have never said such a thing.... I was talking about peace.... What is being said about an apocalyptic war and—global war, things of that nature. This is what the Zionists are claiming. Imam . . . will come with logic, with culture, with science. He will come so that there is no more war. No more enmity, hatred. No more conflict. He will call on everyone to enter a brotherly love. Of course, he will return with Jesus Christ. The two will come back together. And working together, they would fill this world with love. The stories that have been disseminated around the world about extensive war, apocalyptic wars, so on and so forth, these are false. 283 As a Jewish atheist, I can’t say I find these remarks completely reassuring. But with one obvious change they are not appreciably different from those held by devout Christians; indeed, they are milder, as many Christians do believe in an apocalyptic war and have fantasized about it in bestselling novels. **As for the speech containing the phrase that was translated as “wiping Israel off the map,” the** *New York Times* **writer Ethan Bronner consulted Persian translators and analysts of Iranian government rhetoric on the meaning of the phrase in context, and they were unanimous that Ahmadinejad was daydreaming about regime change in the long run, not genocide in the days ahead**.284 **The perils of translating foreign bombast bring to mind Khrushchev’s boast “We willbury you,” which turned out to mean “outlive” rather than “entomb**.” **There is a** parsimonious **alternative explanation of Iran’s behavior**. In 2002 George W. **Bush identified** Iraq, North Korea, and **Iran as the “axis of evil” and proceeded to invade Iraq and depose its leadership**. North Korea’s leaders saw the writing on the wall and promptly developed a nuclear capability, which (as they no doubt anticipated) has put an end to any musings about the United States invading them too. Shortly afterward Iran put its nuclear program into high gear, aiming to create enough ambiguity as to whether it possesses nuclear weapons, or could assemble them quickly, to squelch any thought of an invasion in the mind of the Great Satan. **If Iran does become a confirmed or suspected nuclear power, the history of the nuclear age suggests thatthe most likely outcome would be nothing.** As we have seen, **nuclear weapons have turned out to be useless for anything but deterrence against annihilation**, **which is why the nuclear powers have repeatedly been defied by their nonnuclear adversaries**. **The most recent episode of proliferation bears this out. In 2004 it was commonly predicted that if North Korea acquired a nuclear capability, then by the end of the decade it would share it with terrorists and set off a nuclear arms race with South Korea, Japan, and Taiwan.285 In fact, North Korea did acquire a nuclear capability, the end of the decade has come and gone, and nothing has happened**. **It’s also unlikely that any nation would furnish nuclearammunition to the loose cannons of a terrorist band, thereby giving up control over how they would be used while being on the hook for the consequences.286 In the case of Iran, before it decided to bomb Israel** (or license Hezbollah to do so in an incriminating coincidence), **with no conceivable benefit to itself, its leaders would have to anticipatea nuclear reprisal by Israeli commanders**, **who could match them hothead for hothead,together with an invasion by a coalition of powers enraged by the violation of thenuclear taboo**. **Though the regime is detestable and in many ways irrational, one wonders whether its principals are so indifferent to continuing their hold on power as to choose to annihilate themselves in pursuit of perfect justice in a radioactive Palestine or the arrival of the Twelfth Imam, with or without Jesus at his side**. As Thomas Schelling asked in his 2005 Nobel Prize lecture, “**What else can Iran accomplish, except possibly the destruction of its own system, with a few nuclear warheads? Nuclear weapons should be too precious to give away or to sell, too precious to waste killing people when they could, held in reserve, make the United States, or Russia, or any other nation, hesitant to consider military action**.”287 Though it may seem dangerous to consider alternatives to the worst-case scenario, the dangers go both ways. In the fall of 2002 George W. Bush warned the nation, “America must not ignore the threat gathering against us. Facing clear evidence of peril, we cannot wait for the final proof —the smoking gun—that could come in the form of a mushroom cloud.” The “clear evidence” led to a war that has cost more than a hundred thousand lives and almost a trillion dollars and has left the world no safer. **A cocksure certainty that Iran will use nuclear weapons**, in defiance of sixty-five years of history in which authoritative predictions of inevitable catastrophes were repeatedly proven wrong, **could lead to adventures with even greater costs.**

### Iran Aff: 2AC

**Obama will push for guantanamo closure now**

**AP 11-18-13** "President Obama pushes to overcome obstacles to closing the Guantanamo Bay prison Read more: http://www.nydailynews.com/news/politics/white-house-pushes-loosen-gitmo-transfer-rules-article-1.1520558#ixzz2pMphT37Q"www.nydailynews.com/news/politics/white-house-pushes-loosen-gitmo-transfer-rules-article-1.1520558

President Barack **Obama is pushing to overcome obstacles to closing the Guantanamo Bay prison**, an elusive goal which has frustrated him since he took office. **That is setting the White House on a collision course with Congress** in its bid to loosen restrictions for moving out detainees.

#### Court don’t link—gitmo-specific

Stimson 9

[09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities. Politically speaking, it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.

#### Obama veto solves

Merry 12 – 31 (Robert W, political editor of the National Interest, “MERRY: Obama may buck the Israel lobby on Iran,” <http://www.washingtontimes.com/news/2013/dec/31/merry-obama-may-buck-the-israel-lobby-on-iran/#ixzz2pLctUIqk>, CMR)

Presidential press secretary Jay Carney uttered 10 words the other day that represent a major presidential challenge to the American Israel lobby and its friends on Capitol Hill. Referring to Senate legislation designed to force President Obama to expand economic sanctions on Iran under conditions the president opposes, Mr. Carney said: “If it were to pass, the president would veto it.” For years, there has been an assumption in Washington that you can’t buck the powerful Israel lobby, particularly the American Israel Public Affairs Committee, or AIPAC, whose positions are nearly identical with the stated aims of Israeli Prime Minister Benjamin Netanyahu. Mr. Netanyahu doesn’t like Mr. Obama’s recent overture to Iran, and neither does AIPAC. The result is the Senate legislation, which is similar to a measure already passed by the House. With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.

#### Sanctions pass but won’t hurt negotiations – and Iran’s not committed

EP 12 -29 (“Top Democrat presses Obama on Iran sanctions”, <http://www.tehrantimes.com/politics/113124-top-democrat-presses-obama-on-iran-sanctions->, CMR)

U.S. President Barack Obama faced mounting bipartisan pressure on Friday to drop his resistance to an Iran sanctions bill after Tehran announced that it is building a new generation of centrifuges to enrich uranium, Fox News reported. One of the president's top Democratic allies is leading the charge for Congress to pass sanctions legislation, despite the president's pleas to stand down. Senate Foreign Relations Committee Chairman Bob Menendez, D-N.J., told Fox News that the "Iranians are showing their true intentions" with their latest announcement. "If you're talking about producing more advanced centrifuges that are only used to enrich uranium at a quicker rate... the only purposes of that and the only reason you won't give us access to [a military research facility] is because you're really not thinking about nuclear power for domestic energy -- you're thinking about nuclear power for nuclear weapons," he claimed. Menendez was reacting after Iran's nuclear chief Ali Akbar Salehi said late on Thursday that the country is building a new generation of centrifuges for uranium enrichment. He said the system still needs further tests before the centrifuges can be mass produced. Iran, as part of a six-month nuclear deal with the U.S. and other world powers, agreed not to bring new centrifuges into operation during that period. But the deal does not stop it from developing centrifuges that are still in the testing phase. On Friday, the Embassy of Israel in Washington released a statement reiterating their call for Iran to halt enrichment and remove the infrastructure behind it. Menendez said he, like the president, wants to test the opportunity for diplomacy. "The difference is that we want to be ready should that diplomacy not succeed," the senator said. "It's getting Congress showing a strong hand with Iranians at the same time that the administration is seeking negotiation with them. I think that that's the best of all worlds." Obama would not appear to agree. At his year-end news conference, the president tried to push back on those advocating new legislation by insisting the tentative deal with Iran has teeth. "Precisely because there are verification provisions in place, we will have more insight into Iran's nuclear program over the next six months than we have previously," Obama said. "We'll know if they are violating the terms of the agreement. They're not allowed to accelerate their stockpile of enriched uranium." Obama argues that Congress could step in at any time to approve new sanctions if Iran violates the terms of the agreement. Further, he argues that legislation at this stage could imperil the hard-fought Geneva deal. But sponsors of the legislation in the Senate, which would only trigger sanctions if Iran violates the interim deal or lets it expire without a long-term accord, say the legislation would do just the opposite -- put added pressure on Iran to rein in its nuclear program. A total of 47 co-sponsors are now behind the legislation introduced by Menendez and Sen. Mark Kirk, R-Ill. Supporters are hoping to reach a 67-member, veto-proof majority. U.S. State Department spokeswoman Marie Harf said Friday that all parties will be resuming negotiations after the holidays. She added, "It's important to remember what's at stake if Iran does not choose the path this diplomatic process lays out for them.”

#### PC fails on sanctions

Foster 12 – 31 (Peter, “Obama has to get his act together,” <http://gulfnews.com/opinions/columnists/obama-has-to-get-his-act-together-1.1272540>, CMR)

And as for Obamacare, while far from a certain success, the websites and exchanges are now grinding into life and the “victims” of that particular fight — those who will pay more for their health insurance, not less — are relatively few in number. It also is not impossible — as Ronald Reagan had shown at the end of his second term — that Obama may yet be saved by his foreign policy, aided by John Kerry, a Secretary of State whose sheer energy and willingness to lead (unlike his boss) has been a welcome change in many capitals last year. Reagan showed what was possible. In early 1987, his ratings had plummeted so far (42 per cent), following the Iran-Contra scandal, that when he welcomed that year’s SuperBowl champions to the White House and the captain thanked the fans, Reagan was heard to observe: “Yes, I used to have fans.” But within a year, Reagan’s ratings were back over 50 per cent as he took credit for the sudden warming of ties with the Soviet Union and staged his historic summits with Mikhail Gorbachev. The real question is whether Obama — and a second-string team of advisers at the White House who keep putting up backs in Congress, including among Democrats — can re-emerge as a force for progress. Already a fight looms over Iran sanctions this month — thanks to a clumsy White House promise to veto a bill that was co-signed by 15 Democrat senators, with the promise of perhaps another 15 signatures to come. But instead of cutting a deal with Democrat senators facing re-election in the mid-terms — several with donors and electorates that want a tough line on Iran — Obama took the opportunity in his press conference to sneer at them. “I think the politics of trying to look tough on Iran are often good when you’re running for office or if you’re in office,” said the man who has run his last election. It is the kind of unnecessary clumsiness that has been the hallmark of this White House’s dealings with Congress. Obama is right. He has plenty going for him in 2014, but the underlying tailwinds will § Marked 09:44 § mean nothing without a change of attitude at the top. “A couple [of] days of sleep and sun” — the president’s own prescription for erasing the wounds of 2013 — will not be enough.

**won’t escalate**

Matthew **Kroenig 12** Matthew Kroenig is a Stanton nuclear security fellow at the Council on Foreign Relations and an assistant professor of government at Georgetown University. From July 2010 to July 2011, he was a Council on Foreign Relations International Affairs Fellow in the Department of Defense, where he worked on Middle East defense policy and strategy. Previously, in 2005, he worked as a strategist in the Office of the Secretary of Defense “Why Attacking Iran Is A Good Idea” March 21, 2012 http://postwarwatch.com/2012/03/21/matthew-kroenig-attacking-iran/

**The United States would try to build** international support for an attack, to build **a coalition, or even call for a vote in the UN Security § Marked 09:44 § Council.** China and Russia would almost certainly veto such a measure, so it is very unlikely there could be a Security Council Resolution. But **the US could build an international coalition with the British, the French, and other allies to support an attack**. The question is, what would **China and Russia** do, would they support Iran? They **are not formal allies of Iran. They have been less than amicable with Iran; Russia and China would almost certainly protest a US strike, yet it is unlikely that they could or would retaliate in a meaningful way** against the United States **economically or militarily**: I think **they would lodge a diplomatic protest, but that is all.**

## \*\*1AR\*\*

### drone shift

**There’s no tradeoff**

Robert **Chesney 11**, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/

Yesterday Jack linked to this piece by Noah **Feldman**, which among other things **advances the argument that** the **Obama** administration has **resorted to** drone **strikes** at least in part **in order to avoid having to grapple with** the **legal and political problems associated with** military **detention**:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ **Is there truly a detention-drone strike tradeoff, such that** the **Obama** administration **favors killing** rather than capturing? As an initial matter, **the numbers quoted above aren’t correct** according to the New America Foundation database of drone strikes in Pakistan, **2008 saw a total of 33 strikes, while in 2009 there were 53** (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But **what does all this really prove?**¶ **Not much**, I think. Most if not all of **the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available** for these missions, **the locations in Pakistan** where drones have been permitted to operate, **and** most notably **whether drone strikes were conditioned on** obtaining **Pakistani permission**. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] **Pakistani permission no longer was required**.[7] ¶ **The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined**.[8] **That pace continued in 2009**, which eventually saw a total of 53 strikes.[9] **And then, in 2010, the rate more than doubled**, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ **There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region**, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. **In** such **locations, we seem to be using neither drones nor detention. Rather, we** either **are relying on host-state intervention or we are limiting ourselves to surveillance**. Very hard to know how much of each might be going on, of course. **If it is occurring often**, moreover, **it might reflect a decline in host-state willingness to cooperate with us** (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). **In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure**.

**Prosecuting terrorists solves drone shift**

Craig **Whitlock 13**, Washington Post, "Renditions continue under Obama, despite due-process concerns", January 1, articles.washingtonpost.com/2013-01-01/world/36323571\_1\_obama-administration-interrogation-drone-strikes

The three European men with Somali roots were arrested on a murky pretext in August as they passed through the small African country of Djibouti. But the reason soon became clear when they were visited in their jail cells by a succession of American interrogators.¶ U.S. agents accused the men — two of them Swedes, the other a longtime resident of Britain — of supporting al-Shabab, an Islamist militia in Somalia that Washington considers a terrorist group. Two months after their arrest, the prisoners were secretly indicted by a federal grand jury in New York, then clandestinely taken into custody by the FBI and flown to the United States to face trial.¶ The secret arrests and detentions came to light Dec. 21 when the suspects made a brief appearance in a Brooklyn courtroom.¶ The men are the latest example of how the Obama administration has embraced rendition — the practice of holding and interrogating terrorism suspects in other countries without due process — despite widespread condemnation of the tactic in the years after the Sept. 11, 2001, attacks.¶ Renditions are taking on renewed significance because the administration and **Congress have not reached agreement on a consistent legal pathway for apprehending terrorism suspects** overseas **and bringing them to justice**.¶ Congress has thwarted President Obama’s pledge to close the military prison at Guantanamo Bay, Cuba, and has created barriers against trying al-Qaeda suspects in civilian courts, including new restrictions in a defense authorization bill passed last month. The White House, meanwhile, has resisted lawmakers’ efforts to hold suspects in military custody and try them before military commissions.¶ **The** impasse and **lack of detention options**, critics say, **have led to a de facto policy** under which the administration finds it easier **to kill terrorism suspects**, **a key reason for the surge of U.S. drone strikes in Pakistan, Yemen and Somalia**. Renditions, though controversial and complex, represent one of the few alternatives.

### A2 “Intel Turns”

#### Prosecution helps with intel gathering

Human Rights First 09 (March 2009, non-profit, nonpartisan international human rights organization based in New York and Washington D.C., "The Case Against A Special Terrorism Court" Human Rights First) www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf

Finally, In Pursuit of Justice finds that criminal prosecution often assists rather than inhibits intelligence gathering. The Sixth Amendment to the U.S. Constitution entitles any suspect who has been criminally charged to legal representation. But many suspects with lawyers end up cooperating with the government in exchange for leniency in sentencing. “The cooperation process has proven historically to be one of the government’s most powerful tools in gathering intelligence,” write Zabel and Benjamin. “Indeed, the government recognizes that cultivating cooperation pleas is an effective intelligence gathering tool for all types of criminal investigations, including significant terrorist cases.”18

### China--SCS 1NC

#### No impact to South China Sea conflict

**Goldstein, 2011,** Lyle, associate professor in the China Maritime Studies Institute at the U.S. Naval War College in Newport, R.I. He is co-editor of the recent volumes China, the United States and 21st-Century Sea Power: Defining a Maritime Security Partnership and Chinese Aerospace Power: Evolving Maritime Roles. “The South China Sea's Georgia Scenario,” <http://www.foreignpolicy.com/articles/2011/07/11/the_south_china_seas_georgia_scenario?page=0,2>

The brutal truth, however, is that Southeast Asia matters not a whit in the global balance of power. Most of the region comprises small, poor countries of no consequence whatsoever, but the medium powers in the region, such as Vietnam, Indonesia, and Australia will all naturally and of their own accord stand up against a potentially more aggressive China. If China and Vietnam go to war over some rocks in the ocean, they will inevitably both suffer a wide range of deleterious consequences, but it will have only a marginal impact on U.S. national security. True, these sea lanes are critical to the Japanese and South Korean economies, but both of these states are endowed with large and capable fleets -- yet another check on Beijing's ambitions.China, moreover, is all too aware of what happened to Georgia in 2008. In that unfortunate case, the United States showered a new ally with high-level attention and military advisors. But when Russian tanks rolled in, effectively annexing a large section of the country and utterly destroying Tbilisi's armed forces, Washington's response amounted to a whimper: There was, in the end, no appetite for risking a wider conflict with Moscow over a country of marginal strategic interest. The lessons for Southeast Asia should be clear. Washington must avoid the temptation -- despite local states cheering it on at every opportunity -- to overplay its hand. The main principle guiding U.S. policy regarding the South China Sea has been and should remain nonintervention. Resource disputes are inherently messy and will not likely be decided by grand proclamations or multilateral summitry. Rather, progress will be a combination of backroom diplomacy backed by the occasional show of force by one or more of the claimants. In fact, Beijing's record of conflict resolution over the last 30 years is rather encouraging: China has not resorted to a major use of force since 1979.

### Pzkeeping

#### UN pzkeeping fails

**Haas, 10** Richard Haas, CFR President, 1/5/2010, The Case for Messy Multilateralism, http://www.cfr.org/publication/21132/case\_for\_messy\_multilateralism.html?breadcrumb=%2Fissue%2F42%2Fun

But to acknowledge that we are all multilateralists now (or at least need to be) is only to start the conversation. Multilateralism is not one thing but many. The issue takes on a new urgency in the aftermath of the recent Copenhagen conference, which brought together representatives of 193 governments in an unsuccessful effort to reach a formal, binding and comprehensive accord. Whatever its consequences for climate change, Copenhagen is but the most recent reminder that classic multilateralism is increasingly difficult to achieve. This same reality also helps to account for the world's inability to agree to a new global trade accord. Launched in Qatar nearly a decade ago, the Doha round of negotiations has stalled. There are simply too many participants, too many contentious issues and too many domestic political concerns to discuss. This problem also explains the near-total irrelevance of the United Nations General Assembly. "One man, one vote" may provide a sound basis for domestic politics, but on a global scale democracy (or, more precisely, democratic multilateralism) is a prescription for doing nothing. It is not simply the large number of participants but the fact that it makes little sense to give countries with minuscule populations and economies equal standing with, say, China or the US. The UN's founders predicted as much when they created the Security Council. The idea was to establish an elite body to tackle the world's most important issues. The problem is that the composition of the Security Council reflects what the world looked like after the second world war. That world is now more than 60 years old. Missing from the ranks of permanent members are India, Japan, Germany, Brazil and representatives of a more integrated Europe. It was this weakness (along with the inability to agree on the make-up of a reformed Security Council) that in part led to the creation of the Group of Seven and the trilateral process in the 1970s. Japan and the European Commission gained a seat at this important table. Yet over the decades, the G7 also proved inadequate, as it left out such critical countries as China and India. Hence the emergence of the Group of 20 in the midst of the global financial crisis and the Major Economies Forum as concerns over climate change mounted. It is too soon to judge the impact of these latest versions of elite multilateralism. In the meantime, we are seeing the emergence of multiple innovations. One is regionalism. The proliferation of bilateral and regional trade pacts (most recently in Asia) is in part a reaction to the failure to conclude a global trade accord. Such arrangements are inferior - they do not, for example, normally deal with subsidies, much less cover all products and services. They can also have the perverse effect of retarding trade by discriminating against non-members. But some trade expansion is preferable to none. A second alternative is functional multilateralism - coalitions of the willing and relevant. A global accord on climate will prove elusive for some time to come. But that need not translate into international inaction. A useful step would be to conclude a global pact to discourage the cutting down and burning of forests, something that accounts for a fifth of the world's carbon output. Copenhagen made some limited progress here, but more needs to be done to assist such countries as Brazil and Indonesia. Yet another alternative might be described as informal multilateralism. In many cases it will prove impossible to negotiate international accords that will be approved by national parliaments. Instead, governments would sign up to implementing, as best they can, a series of measures consistent with agreed-upon international norms. We are most likely to see this in the financial realm, where setting standards for the capital requirements of banks, accounting systems and credit ratings would facilitate global economic growth. None of this - not elitism or regionalism or functionalism or informalism - is a panacea. Such collective action is invariably less inclusive, less comprehensive and less predictable than formal global accords. It can suffer from a lack of legitimacy. But it is doable and desirable, and can lead to or complement classic multilateralism. Multilateralism in the 21st century is, like the century itself, likely to be more fluid and, at times, messy than what we are used to.

### Impact D

#### won’t escalate- that’s korenig=- finish

**urity Council.** China and Russia would almost certainly veto such a measure, so it is very unlikely there could be a Security Council Resolution. But **the US could build an international coalition with the British, the French, and other allies to support an attack**. The question is, what would **China and Russia** do, would they support Iran? They **are not formal allies of Iran. They have been less than amicable with Iran; Russia and China would almost certainly protest a US strike, yet it is unlikely that they could or would retaliate in a meaningful way** against the United States **economically or militarily**: I think **they would lodge a diplomatic protest, but that is all.**

#### recent no c

#### No draw in

**Hennigan, 06** ( Jim, lawyer, The Beat, July 25, <http://www.metrobeat.net/gbase/Expedite/Content?oid=oid%3A3946>)

Israel may have gone “nuclear” over Hezbollah’s cross-border incursion to kidnap two Israeli soldiers (certainly if one takes the position that Hezbollah’s action must be viewed in isolation and not as the last straw), but it’s only figuratively speaking. Even if Israel were to use nuclear weapons ( I’m not betting on it), it’s unlikely to escalate into a worldwide war. The war in Lebanon beats none of the indicia of earlier incidents-from the good old days- where the world was truly on the brink of a third world war. Events like the Yom Kippur War ( or Arab- Israeli War of 1973) when a beleaguered Nixon facing down a constitutional crisis with Watergate delegated authority to his flag officer in the Sixth Fleet to use tactical nuclear weapons, if needed , to halt the Soviet-trained and- armed Egyptian and Syrian offensive. Or the Cuban Missile Crisis in which Nikita Khrushchev was only slightly less aggressive than Fidel Castro about whether to fire the nukes at America before they had to withdraw. Now those are a couple of bona fide World War-inspiring developments. To think that the world is teetering on the brink of a world war now seriously diminishes the gravity of the near-cataclysms the world has walked away from in the past. The events in Lebanon don’t hold a Polaris missile to a string of volatile situations over the past half century. Even though Hezbollah is Syria’s surrogate in yet another attempt by Syria to wage war against Israel, the nations of the world are not inextricably linked to supporting one side or the other in this regional conflict. In fact, there’s dissension among Arab nations as to whether Hezbollah is worth defending. Even Egypt is noncommittal. And the parties most directly involved- Syria and Israel- are seemingly content to let Lebanon provide the battleground. How the world could get dragged into this conflict requires a conspiracy of events that Oliver Stone would envy.

#### \*\*won’t happen

Dave **Seminara 12** is an award-winning freelance photojournalist and former diplomat based in Northern Virginia. Last Edited on February 29, 2012 The Washington Diplomat March 2012 “Iran: Has the Drumbeat of Debate Led to Inevitable March to War?” <http://www.washdiplomat.com/index.php?option=com_content&view=article&id=8242:iran-has-the-drumbeat-of-debate-led-to-inevitable-march-to-war&catid=1484:march-2012&Itemid=497>

Still, he believes it is important for Americans to debate the Iran issue honestly and consider the use of force. He also echoed what Defense Secretary Leon Panetta reportedly suggested: that the possibility of an Israeli strike on Iran continues to increase heading into 2012 as Iran's "capability continues to evolve." But John Ghazvinian, a historian who is working on a book on the history of U.S.-Iranian relations, doubts that Israel or the United States will conduct a military strike on Iran anytime soon. "The likelihood of military action against Iran is almost zero," claimed Ghazvinian, who was born in Iran and has conducted recent field research there. "It would be such a poor decision that I can't imagine it being taken quite frankly. From the Israeli perspective, there's a strategic advantage to ensuring that the think tank consensus is that an Israeli attack on Iran is imminent and the only way to prevent it is to ratchet up pressure on Iran. But I believe that for Israel, this type of pressure on Iran is itself, in fact, the end game." Walt argues that Israel wants to keep the world's focus on Iran, in part to distract from the stalled peace process with the Palestinians. He believes an attack on Iran would help rally support around the regime and that patient diplomacy and sanctions are the best way to deal with Tehran. Ledeen contends that this approach has failed miserably.

#### Court legitimacy shields

Pacelle 02 Richard L. Pacelle, Associate Professor, Political Science, University of Missouri-St. Louis, THE ROLE OF THE SUPREME COURT IN AMERICAN POLITICS, 2002, p. 102.

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court rarther than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resource to justify its decision. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy. The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and the Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decision even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter.

#### Blame-shifting solves the link

Whittington 05 (Keith E. Whittington, Professor of Politics - Princeton University, "Interpose Your Friendly Hand: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, The American Political Science Review, Nov., (99)4, p. 583)

There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician's own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review(Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### Politicians can just say their hands are tied

Dallas Morning News 8/19/05

<http://www.dallasnews.com/sharedcontent/dws/news/texassouthwest/legislature/schoolfinance/stories/082005>dntexsession.8bd31b4a.html

That could foreshadow the court's response to a chief argument by state attorneys – that the court should butt out and leave school finance to the Legislature. A court finding against the state would put the ball back in the hands of lawmakers, who have tended to put off dealing with problems in schools, prisons and mental health facilities until state or federal judges forced them to act. "It's the classic political response to problems they don't want to deal with," said Maurice Dyson, a school finance expert and assistant law professor at Southern Methodist University. "There is no better political cover than to have a court rule that something must be done, which allows politicians to say their hands are tied."

#### Obama push failing

Spetalnick 11-14-13 (Matt, Reuters, <http://www.globalpost.com/dispatch/news/thomson-reuters/131114/obama-appeals-congress-hold-new-sanctions-iran>, )

Some lawmakers said after Wednesday's meetings they were not convinced, and there was no immediate sign that Obama - seeking better ties with Iran after more than three decades of estrangement - had won converts **on Thursday** either.