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#### The Court will maintain Affirmative Action in the Schuette decision now

Scott Lemieux, Poly Sci Prof @ St. Rose, 7-9-2013, “Affirmative Action's Ominous Future,” Prospect, <http://prospect.org/article/affirmative-actions-ominous-future>

In fact, it's hard to imagine an existing program in higher education the current Court majority would vote to uphold as constitutional—just as it is nearly impossible to imagine a preclearance formula for the Voting Rights Act that this Court would approve—even if Kennedy is unwilling to hold affirmative action unconstitutional writ large. It's even possible that Kennedy will ultimately be willing to take the next step. One reason for the Court deciding to write a minimalist opinion in Fisher after sitting on the case for the better part of a year is that the facts of Fisher were not very favorable to opponents of affirmative action. Abigail Fisher, the plaintiff, probably would not have been admitted to U.T. Austin even under entirely race-neutral admissions criteria, making her a less-than-ideal vehicle for demonstrating the alleged injustices of affirmative action. Given a different set of facts, the Roberts Court may well be willing to go further.¶ However, the upcoming case, Schuette v. Coalition to Defend Affirmative Action, concerns the constitutionality of bans on affirmative action, rather than focusing on the constitutionality of affirmative-action programs. It's unlikely to overturn Grutter since the Court declined to do so in Fisher. In 2006, Michigan voters passed Proposal 2, which banned all affirmative-action programs by state agency. In November of last year, a badly divided Sixth Circuit ruled that Proposal 2 violated the equal protection clause of the Fourteenth Amendment. According to the majority opinion, Proposal 2 was unconstitutional because it "reallocates political power or reorders the decision-making process in a way that places special burdens on a minority group's ability to achieve its goals through that process."¶ This decision's odds of being upheld by the Supreme Court are near to nil. In all candor, it might be an uphill struggle for the opinion to get even one vote. I strongly believe that most affirmative-action programs are constitutional and deplore Proposal 2 as a policy matter, but it's a stretch to argue that Michigan is required to have affirmative-action programs. However, this case presents very different conceptual issues than Fisher did. Since it would be entirely possible to overrule the Sixth Circuit without saying anything about the constitutionality of affirmative action, it is very unlikely that the Court will use the case as a way to resolve the issues Fisher didn't. And so the can will likely be kicked down the road once more, hopefully awaiting a more favorable Court majority in the near future.

#### Court doesn’t want to rule on SOP or war powers issues – too politically charged

James M. Lindsay, 4-5-2011, "The Water's Edge: Is Operation Odyssey Dawn Constitutional? Part V," Council on Foreign Relations - The Water's Edge, http://blogs.cfr.org/lindsay/2011/04/05/is-operation-odyssey-dawn-constitutional-part-v/

Most Americans think of the Supreme Court as the legal equivalent of a baseball umpire. In their view, the Court’s job is to call legal balls and strikes, and thereby tell us what the law is. So why then is the question of whether presidents can initiate military hostilities so hotly debated?

 It turns out that the Supreme Court does not see its job as most Americans do, enforcing the dividing line between the executive and legislative branches. The Court sometimes sidesteps separation-of-powers issues, especially when it comes to foreign policy. The Court has good reason to bite its tongue. However, when it comes to the war power, its silence alters the basic constitutional structure that the Framers created. The Supreme Court hasn’t always shied away from refereeing separation-of-powers questions on foreign policy. In Little v. Barreme (1804), for example, the Court protected Congress’s war power from executive encroachment. The case arose when a U.S. naval ship seized a vessel sailing from a French port during the Quasi-War of 1798 with France. The problem was that Congress had specifically directed the U.S. Navy to seize ships heading to French ports. The captain of the U.S. ship defended his actions on the grounds that the secretary of the Navy had ordered him to seize ships regardless of whether they were bound to or from French ports. The Supreme Court rejected the captain’s defense. It ruled that the executive branch could not change Congress’s instructions, even if doing so would have been a more effective way of achieving the military goals Congress sought. Noticeably absent in the Court’s decision was any reference to the powers the president might have as the nation’s commander in chief. The modern Supreme Court, however, generally shies away from wading into war powers cases. The Court offers several reasons for its reluctance. One reason is the courts’ preference to hear only lawsuits brought by someone who has legal standing, which is defined as having suffered concrete personal harm. Traditionally, the courts have held that neither Congress nor the president suffers concrete personal injury when the other branch tries to usurp its authority. So it is generally (though not always) the case, as the late great legal scholar Louis Henkin put it, that “the president himself cannot bring a judicial proceeding to challenge alleged usurpation of his authority by Congress, nor can Congress (or members of Congress) sue to enjoin an alleged usurpation by the president.” For example, when twenty-six members of the House of Representatives sued Bill Clinton in 1999 for ordering the bombing of Serbia without congressional authorization, the lower federal courts dismissed the lawsuit on the grounds that the legislators did not have legal standing. The Supreme Court refused to hear the appeal. A second reason the courts may sidestep separation-of-powers questions is the principle of ripeness. Courts are not debating societies for thrashing out hypothetical issues. They are places for assessing allegations of real or imminent harm. So courts generally take only cases that meet these criteria. For example, 110 members of Congress sued President George H.W. Bush in the fall of 1990, arguing that he could not use U.S. troops to liberate Kuwait unless he first had congressional authorization. The judge in Dellums v. Bush granted the members standing, but then dismissed the case because it was not ripe for judicial review. He argued that the case would be ripe only if “the plaintiffs in an action of this kind be or represent the majority of the members of Congress.” In short, if Congress did not formally stop Bush from acting, the courts would not bail it out. The third reason the courts might pass on a separation of powers issue is the doctrine of political questions. The idea here is that it is the courts’ job to rule on the legality of what the government has done and not on the wisdom of its decision. The Supreme Court takes a broad view of what constitutes a political question in foreign affairs. For instance, in 1979 President Jimmy Carter unilaterally terminated the Mutual Defense Treaty with Taiwan. Sen. Barry Goldwater (R-Ariz.) and more than a dozen of his colleagues filed suit alleging that Carter had exceeded his constitutional authority. To all of us who did not go to law school, Goldwater v. Carter seems to have raised a straightforward legal question: which branch of government has the authority to terminate a treaty? But four Supreme Court justices argued that the question was “‘political’ and therefore nonjusticiable because it involves the authority of the President in the conduct of our country’s foreign relations and the extent to which the Senate or the Congress is authorized to negate the action of the President.” (A fifth justice argued that the case was not ripe for trial because the Senate had taken no formal steps to stop Carter.) Why have the courts in recent decades shied away from policing the boundaries of the separation of powers? Two practical motives stand out. One is that the courts want to limit their workload. If anyone could sue, regardless of whether he or she had been personally harmed, the courts would be swamped. The same would be true if the courts agreed to hear cases about legal “what-ifs” or if they took on the task of passing judgment on the wisdom rather than the legality of what the government does. The second practical reason for the rules on justiciability is specific to the separation-of-powers issue. If lawmakers know they can toss tough problems into the courts’ lap, that’s precisely what they will do. Why cast a politically tough vote if you can dump the matter on justices who don’t have to face the voters? This would undermine the democratic idea that the two political branches—Congress and the president—should decide the country’s future course.

#### Ruling on the aff trades off with the court’s willingness to anger the same constituency – they’d issue a make up call on Aff Action

Peretti 1 - Terri Jennings Peretti, Professor of Political Science at Santa Clara University, 2001, In Defense of a Political Court, p. 152-153

To the degree that a justice cares deeply about her policy goals, she will be quite attentive to the degree of support and opposition among interest groups and political leaders for those goals. she will be aware of the re­sources (e.g., commitment, wealth, legitimacy) that the relevant interest groups possess who bear the burden of both carrying forward the appropri­ate litigation necessary for policy success and for pressuring the other branches for full and effective implementation. Only the policy-motivated justice will care about the willingness of other government officials to comply with the Court’s decisions or carry them out effectively. And only the policy-motivated justice will care about avoiding the application of political sanc­tions against the Court that might foreclose all future policy options.

The school desegregation cases illustrate these points quite nicely. The Court could not pursue the goal of racial integration and racial equality until there was an organized and highly regarded interest group such as the Na­tional Association for the Advancement of Colored People willing and able to help. The Court further was required to protect that group from political attack, as it did in NAACP v. Alabama’03 and NAACP v. Button.’04 Avoidance of other decisions that might harm its desegregation efforts was also deemed necessary. Thus, the Court had legal doctrine available to void anti discrimination statutes, but refused to do so on two occasions.’05 (Murphy notes that one justice was said to remark upon leaving the conference discussion, “One bombshell at a time is enough.”’06) The Court additionally softened the blow by adopting its “deliberate speed” implementation formula. Even so, the Court still needed the active cooperation of a broad range of government officials, in all branches and at all levels of government, in order to carry out its decisions effectively. Thus, significant progress in racial integration in the southern schools did not in fact occur until Congress and the Department of Health, Education, and Welfare decided to act. The Court further had to consider whether the political opposition that it knew would ensue would be sufficient to result in sanctions against the Court, such as withdrawal of jurisdiction or impeachment.. These considerations arose only in the process of caring deeply about the policy goal at hand—racial equality in public education. They were not a by-product of caring only about the logical or precedential consistency of an opinion or of worrying only about deriving a decision from the Framers' intentions.

#### Affirmative action is crucial to military readiness

Julie W. Becton Jr, Lt. Gen., 2-19-2003, “Amicus Curiae Brief,” http://www.vpcomm.umich.edu/admissions/legal/gru\_amicus-ussc/um/MilitaryL-both.pdf

The modern American military candidly acknowledges the critical link between minority officers and military readiness and effectiveness. "[T]he current leadership views complete racial integration as a military necessity – that is, as a prerequisite to a cohesive, and therefore effective, fighting force. In short, success with the challenge of diversity is [-18-] critical to national security." President’s Report § 7.1. The military’s continuing, race-conscious efforts to increase the percentage of minority officers have achieved some results, but this progress must continue. See Dep’t of Def., Population Representation in the Military Services 4-8 (Nov. 1998). Accordingly, the armed forces strive to identify and train the best qualified minority candidates to serve as officers. Infra at 18-27. As we show, these efforts include \*race-conscious recruiting, preparatory, and admissions policies\* at the service academies and in ROTC programs – efforts that underscore the military’s resolve to do what is necessary and effective to integrate the officer corps.

#### Readiness solves nuclear war

Robert Kagan, senior fellow @ Carnegie, 7-19-2007, “End of Dreams, Return of History,” <http://www.hoover.org/publications/policyreview/8552512.html>

The jostling for status and influence among these ambitious nations and would-be nations is a second defining feature of the new post-Cold War international system. Nationalism in all its forms is back, if it ever went away, and so is international competition for power, influence, honor, and status. American predominance prevents these rivalries from intensifying — its regional as well as its global predominance. Were the United States to diminish its influence in the regions where it is currently the strongest power, the other nations would settle disputes as great and lesser powers have done in the past: sometimes through diplomacy and accommodation but often through confrontation and wars of varying scope, intensity, and destructiveness. One novel aspect of such a multipolar world is that most of these powers would possess nuclear weapons. That could make wars between them less likely, or it could simply make them more catastrophic.

### 2

#### The aff uses expertism to mask their politically constructed scenarios as objective — this privileges insulated decision-making authority — causes deference to the executive — turns case and results in endless militarism

Aziz Rana 12, Assistant Professor of Law, Cornell University Law School; A.B., Harvard College; J.D., Yale Law School; PhD., Harvard University, July 2012, “NATIONAL SECURITY: LEAD ARTICLE: Who Decides on Security?,” 44 Conn. L. Rev. 1417

Despite such democratic concerns, a large part of what makes today's dominant security concept so compelling are two purportedly objective sociological claims about the nature of modern threat. As these claims undergird the current security concept, this conclusion assesses them more directly and, in the process, indicates what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the United States faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create a world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states. n310¶ [\*1486] ¶ Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. Thus, the best response is the further entrenchment of the national security state, with the U.S. military permanently mobilized to gather intelligence and to combat enemies wherever they strike-at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decision-making are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency-one armed with countless secret and public agencies as well as with a truly global military footprint n311 -greatly outweigh the costs.¶

Yet although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are not objective empirical judgments, but rather are socially complex and politically infused interpretations. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves riddled with ideological presuppositions and subjective biases. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that the question of who decides-and with it the issue of how democratic or insular our institutions should be-remains open as well.¶

Clearly, technological changes, from airpower to biological and chemical weapons, have shifted the nature of America's position in the [\*1487] world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet in truth, they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers. n312 But even if technological shifts make doomsday scenarios more chilling than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios tells us little about their likelihood or how best to address them. Indeed, these latter security judgments are inevitably permeated with subjective political assessments-assessments that carry with them preexisting ideological points of view-such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy.¶ In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have-at times unwittingly-reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America's post- World War II position of global primacy, one which today has only expanded following the Cold War. n313 In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that "our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century," was no longer "adequate" for the "20th-century nation." n314 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country's "pre-eminen[ce] in political and military power." n315 Fulbright believed that greater executive action and war- making capacities were essential precisely because the United States found itself "burdened with all the enormous responsibilities that accompany such power." n316 According to Fulbright, the United States had [\*1488] both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. n317 Thus, rather than being purely objective, the American condition of permanent danger was itself deeply tied to political calculations about the importance of global primacy. What generated the condition of continual crisis was not only technological change, but also the belief that the United States' own national security rested on the successful projection of power into the internal affairs of foreign states.¶ The key point is that regardless of whether one agrees with such an underlying project, the value of this project is ultimately an open political question. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion. n318 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principle and overriding danger facing the country. According to National Counterterrorism Center's 2009 Report on Terrorism, in 2009 there were just twenty-five U.S. noncombatant fatalities from terrorism worldwide-nine abroad and sixteen at home. n319 While the fear of a terrorist attack is a legitimate concern, these numbers-which have been consistent in recent years-place the gravity of the threat in perspective. Rather than a condition of endemic danger-requiring ever-increasing secrecy and centralization-such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit national security aims emphasizes just how entrenched Herring's old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling.¶ It also underscores a telling and often ignored point about the nature of [\*1489] modern security expertise, particularly as reproduced by the United States' massive intelligence infrastructure. To the extent that political assumptions-like the centrality of global primacy or the view that instability abroad necessarily implicates security at home-shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. These assumptions mean that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underlines that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge.

If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of "expertise." n320 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threats to newspapers as a method of shaping the public debate. n321 These "open" secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making.

#### Altenative – reject the affirmative’s security discourse – only resistance can generate genuine political thought

Neoclous 8 – Mark Neocleous, Prof. of Government @ Brunel, 2008 [Critique of Security, 185-6]

The only way out of such a dilemma, to escape the fetish, is perhaps to eschew the logic of security altogether - to reject it as so ideologically loaded in favour of the state that any real political thought other than the authoritarian and reactionary should be pressed to give it up. That is clearly something that can not be achieved within the limits of bourgeois thought and thus could never even begin to be imagined by the security intellectual. It is also something that the constant iteration of the refrain 'this is an insecure world' and reiteration of one fear, anxiety and insecurity after another will also make it hard to do. But it is something that the critique of security suggests we may have to consider if we want a political way out of the impasse of security. This impasse exists because security has now become so all-encompassing that it marginalises all else, most notably the constructive conflicts, debatesand discussionsthat animate political life. The constant prioritising of a mythical security as a political end - as the political end constitutes a rejection of politics in any meaningful sense of the term. That is, as a mode of action in which differences can be articulated, in which the conflicts and struggles that arise from such differences can be fought for and negotiated, in which people might come to believe that another world is possible - that they might transform the world and in turn be transformed. Security politics simply removes this; worse, it remoeves it while purportedly addressing it. In so doing it suppresses all issues of power and turns political questions into debates about the most efficient way to achieve 'security', despite the fact that we are never quite told - never could be told - what might count as having achieved it. Security politics is, in this sense, an anti-politics,"' dominating political discourse in much the same manner as the security state tries to dominate human beings, reinforcing security fetishism and the monopolistic character of security on the political imagination. We therefore need to get beyond security politics, not add yet more 'sectors' to it in a way that simply expands the scope of the state and legitimises state intervention in yet more and more areas of our lives. Simon Dalby reports a personal communication with Michael Williams, co-editor of the important text Critical Security Studies, in which the latter asks: if you take away security, what do you put in the hole that's left behind? But I'm inclined to agree with Dalby: maybe there is no hole."' The mistake has been to think that there is a hole and that this hole needs to be filled with a new vision or revision of security in which it is re-mapped or civilised or gendered or humanised or expanded or whatever. All of these ultimately remain within the statist political imaginary, and consequently end up reaffirming the state as the terrain of modern politics, the grounds of security. The real task is not to fill the supposed hole with yet another vision of security, but to fight for an alternative political language which takes us beyond the narrow horizon of bourgeois security and which therefore does not constantly throw us into the arms of the state. That's the point of critical politics: to develop a new political language more adequate to the kind of society we want. Thus while much of what I have said here has been of a negative order, part of the tradition of critical theory is that the negative may be as significant as the positive in setting thought on new paths. For if security really is the supreme concept of bourgeois society and the fundamental thematic of liberalism, then to keep harping on about insecurity and to keep demanding 'more security' (while meekly hoping that this increased security doesn't damage our liberty) is to blind ourselves to the possibility of building real alternatives to the authoritarian tendencies in contemporary politics. To situate ourselves against security politics would allow us to circumvent the debilitating effect achieved through the constant securitising of social and political issues, debilitating in the sense that 'security' helps consolidate the power of the existing forms of social domination and justifies the short-circuiting of even the most democratic forms. It would also allow us to forge another kind of politics centred on a different conception of the good. We need a new way of thinking and talking about social being and politics that moves us beyond security. This would perhaps be emancipatory in the true sense of the word. What this might mean, precisely, must be open to debate. But it certainly requires recognising that security is an illusion that has forgotten it is an illusion; it requires recognising that security is not the same as solidarity; it requires accepting that insecurity is part of the human condition, and thus giving up the search for the certainty of security and instead learning to tolerate the uncertainties, ambiguities and 'insecurities' that come with being human; it requires accepting that 'securitizing' an issue does not mean dealing with it politically, but bracketing it out and handing it to the state; it requires us to be brave enough to return the gift."'

### 3

#### Obama is prioritizing capture over drone strikes now

David Corn 13, Washington Bureau Chief at Mother Jones, 5/23/13, “Obama's Counterterrorism Speech: A Pivot Point on Drones and More?,” http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties

So Obama's speech Thursday on counterterrorism policies—which follows his administration's acknowledgment yesterday that it had killed four Americans (including Anwar al-Awlaki, an Al Qaeda leader in Yemen)—is a big deal, for with this address, Obama is self-restricting his use of drones and shifting control of them from the CIA to the military. And the president has approved making public the rules governing drone strikes.¶ The New York Times received the customary pre-speech leak and reported:¶ A new classified policy guidance signed by Mr. Obama will sharply curtail the instances when unmanned aircraft can be used to attack in places that are not overt war zones, countries like Pakistan, Yemen and Somalia. The rules will impose the same standard for strikes on foreign enemies now used only for American citizens deemed to be terrorists.¶ Lethal force will be used only against targets who pose "a continuing, imminent threat to Americans" and cannot feasibly be captured, Attorney General Eric H. Holder Jr. said in a letter to Congress, suggesting that threats to a partner like Afghanistan or Yemen alone would not be enough to justify being targeted.¶ These moves may not satisfy civil-liberties-minded critics on sthe right and the left. Obama is not declaring an end to indefinite detention or announcing the closing of Gitmo—though he is echoing his State of the Union vow to revive efforts to shut down that prison. Still, these moves would be unimaginable in the Bush years. Bush and Cheney essentially believed the commander in chief had unchallenged power during wartime, and the United States, as they saw it, remained at war against terrorism. Yet here is Obama subjecting the drone program to a more restrictive set of rules—and doing so publicly. This is very un-Cheney-like. (How soon before the ex-veep arises from his undisclosed location to accuse Obama of placing the nation at risk yet again?)¶ Despite Obama's embrace of certain Bush-Cheney practices and his robust use of drones, the president has tried since taking office to shift US foreign policy from a fixation on terrorism. During his first days in office, he shied away from using the "war on terrorism" phrase. And his national security advisers have long talked of Obama's desire to reorient US foreign policy toward challenges in the Pacific region. By handing responsibility for drone strikes to the military, Obama is helping CIA chief John Brennan, who would like to see his agency move out of the paramilitary business and devote more resources to its traditional tasks of intelligence gathering and analysis.¶ With this speech, Obama is not renouncing his administration's claim that it possesses the authority to kill an American overseas without full due process. The target, as Holder noted in that letter to Congress, must be a senior operational leader of Al Qaeda or an associated group who poses an "imminent threat of violent attack against the United States" and who cannot be captured, and Holder stated that foreign suspects now can only be targeted if they pose "a continuing, imminent threat to Americans." (Certainly, there will be debates over the meaning of "imminent," especially given that the Obama administration has previously used an elastic definition of imminence.) And Obama is not declaring an end to the dicey practice of indefinite detention or a conclusion to the fight against terrorism. **But the speech may well mark a** pivot point. Not shockingly, **Obama is attempting to find middle ground**, where there is more oversight and more restraint regarding activities that pose serious civil liberties and policy challenges. The McCainiacs of the world are likely to howl about any effort to place the effort to counter terrorism into a more balanced perspective. The civil libertarians will scoff at half measures. But Obama, at the least, is showing that he does ponder these difficult issues in a deliberative manner and is still attempting to steer the nation into a post-9/11 period. That journey, though, may be a long one.

#### Restricting detention policies means we kill and extradite prisoners

Jack Goldsmith 09, a professor at Harvard Law School and a member of the Hoover Institution Task Force on National Security and Law, assistant attorney general in the Bush administration, 5/31/09, “The Shell Game on Detainees and Interrogation,” <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052902989.html>

The cat-and-mouse game does not end there. As detentions at Bagram and traditional renditions have come under increasing legal and political scrutiny, the Bush and Obama administrations have relied more on other tactics. They have secured foreign intelligence services to do all the work -- capture, incarceration and interrogation -- for all but the highest-level detainees. And they have increasingly employed targeted killings, a tactic that eliminates the need to interrogate or incarcerate terrorists but at the cost of killing or maiming suspected terrorists and innocent civilians alike without notice or due process.¶ There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries.¶ The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse.¶ It is tempting to say that we should end this pattern and raise standards everywhere. Perhaps we should extend habeas corpus globally, eliminate targeted killing and cease cooperating with intelligence services from countries that have poor human rights records. This sentiment, however, is unrealistic. The imperative to stop the terrorists is not going away. The government will find and exploit legal loopholes to ensure it can keep up our defenses.¶ This approach to detention policy reflects a sharp disjunction between the public's view of the terrorist threat and the government's. After nearly eight years without a follow-up attack, the public (or at least an influential sliver) is growing doubtful about the threat of terrorism and skeptical about using the lower-than-normal standards of wartime justice.¶ The government, however, sees the terrorist threat every day and is under enormous pressure to keep the country safe. When one of its approaches to terrorist incapacitation becomes too costly legally or politically, it shifts to others that raise fewer legal and political problems. This doesn't increase our safety or help the terrorists. But it does make us feel better about ourselves.

#### Increased drone use sets a precedent that causes South China Sea conflict

Roberts 13 (Kristen, News Editor at National Journal, “When the Whole World Has Drones”, 3/22/13, <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>)

And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir? “We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.” LOWERING THE BAR Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this. In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.) When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time. The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not. “If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?” But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan. And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft. “The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.” The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge. Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.”

#### South China Sea conflicts cause extinction

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While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon. The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war? Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.” Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists. Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan. At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might? Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China. But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a “nuclear winter” around the globe—destroying agriculture, creating worldwide famine, and generating chaos and destruction.

### 4

#### Deference high now- no courts will touch national security

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Although these procedural and jurisdictional barriers to judicial review can be overcome, those who seek to limit what they regard as executive excess in military and foreign affairs should not count on the judiciary to serve as a consistent ally. The Supreme Court has shown substantial deference to the president in national security cases. Even when the Court has rejected the executive's position, it generally has done so on relatively narrow grounds.¶ Consider the Espionage Act cases that arose during World War I. Schenck v. United States, n63 which is best known for Justice Holmes's [\*452] announcement of the clear and present danger test, upheld a conviction for obstructing military recruitment based on the defendant's having mailed a leaflet criticizing the military draft although there was no evidence that anyone had refused to submit to induction as a result. Justice Holmes almost offhandedly observed that "the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out." n64 The circumstances in which the speech took place affected the scope of First Amendment protection: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right." n65 A week later, without mentioning the clear and present danger test, the Court upheld the conviction of the publisher of a German-language newspaper for undermining the war effort n66 and of Eugene Debs for a speech denouncing the war. n67 Early in the following term, Justice Holmes refined his thinking about clear and present danger while introducing the marketplace theory of the First Amendment in Abrams v. United States, n68 but only Justice Brandeis agreed with his position. n69 The majority, however, summarily rejected the First Amendment defense on the basis of Holmes's opinions for the Court in the earlier cases. n70¶ Similarly, the Supreme Court rejected challenges to the government's war programs during World War II. For example, the Court rebuffed a challenge to the use of military commissions to try German saboteurs. n71 Congress had authorized the use of military tribunals in such cases, and the president had relied on that authorization in directing that the defendants be kept out of civilian courts. n72 In addition, the Court upheld the validity of the Japanese internment program. n73 Of course, the Court did limit the scope of the [\*453] program by holding that it did not apply to "concededly loyal" citizens. n74 But it took four decades for the judiciary to conclude that some of the convictions that the Supreme Court had upheld during wartime should be vacated. n75 Congress eventually passed legislation apologizing for the treatment of Japanese Americans and authorizing belated compensation to internees. n76¶ The Court never directly addressed the legality of the Vietnam War. The Pentagon Papers case, for example, did not address how the nation became militarily involved in Southeast Asia, only whether the government could prevent the publication of a Defense Department study of U.S. engagement in that region. n77 The lawfulness of orders to train military personnel bound for Vietnam gave rise to Parker v. Levy, n78 but the central issue in that case was the constitutionality of the provisions of the Uniform Code of Military Justice that were the basis of the court-martial of the Army physician who refused to train medics who would be sent to the war zone. n79 The few lower courts that addressed the merits of challenges to the legality of the Vietnam War consistently rejected those challenges. n80¶ The picture in the post-2001 era is less clear. In three different cases the Supreme Court has rejected the executive branch's position, but all of those rulings were narrow in scope. For example, Hamdi v. Rumsfeld n81 held that a U.S. citizen held as an enemy combatant must be given a meaningful opportunity to have a neutral decision-maker determine the factual basis for his detention. There was no majority opinion, however, so the implications of the ruling were ambiguous to say the least. Justice O'Connor's plurality opinion for four members of the Court concluded that Congress had authorized the president to detain enemy combatants by passing the Authorization for Use of Military Force n82 and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. [\*454] citizens. n83 Justice Souter, joined by Justice Ginsburg, thought that the AUMF had not in fact authorized the detention of American citizens as required by the statute, n84 which suggested that Hamdi should be released. But the Court would have been deadlocked as to the remedy had he adhered to his view of how to proceed. This was because Justices Scalia and Stevens also believed that Hamdi's detention was unlawful and that he should be released on habeas corpus, n85 whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief. n86 This alignment left four justices in favor of a remand for more formal proceedings, four other justices in favor of releasing Hamdi, and one justice supporting the government's detention of Hamdi with no need for a more elaborate hearing. To avoid a deadlock, therefore, Justice Souter reluctantly joined the plurality's remand order. n87¶ Hamdi was atypical because that case involved a U.S. citizen who was detained. The vast majority of detainees have been foreign nationals. In Hamdan v. Rumsfeld, n88 the Supreme Court ruled that the military commissions that the executive branch had established in the wake of the September 11 attacks had not been authorized by Congress and therefore could not be used to try detainees. n89 A concurring opinion made clear that the president could seek authorization from Congress to use the type of military commissions that had been established unilaterally in this case. n90¶ Congress responded to that suggestion by enacting the Military Commissions Act of 2006, n91 which sought to endorse the executive's detainee policies and to restrict judicial review of detainee cases. In Boumediene v. Bush, n92 the Supreme Court again rejected the government's position. First, the statute did not suspend the writ of [\*455] habeas corpus. n93 Second, the statutory procedures for hearing cases involving detainees were constitutionally inadequate. n94 At the same time, the Court emphasized that the judiciary should afford some deference to the executive branch in dealing with the dangers of terrorism n95 and should respect the congressional decision to consolidate judicial review of detainee cases in the District of Columbia Circuit. n96¶ Detainees who have litigated in the lower federal courts in the District of Columbia have not found a sympathetic forum. The U.S. Court of Appeals for the D.C. Circuit has not upheld a single district court ruling that granted any sort of relief to detainees, and the Supreme Court has denied certiorari in every post-Boumediene detainee case in which review was sought. n97 In only one case involving a detainee has the D.C. Circuit granted relief, and that case came up from a military commission following procedural changes adopted in the wake of Boumediene. n98 About a month after this symposium took place, in Hamdan v. United States n99 the court overturned a conviction for providing material support for terrorism. The defendant was the same person who successfully challenged the original military commissions in Hamdan v. Rumsfeld. n100 This very recent ruling emphasized that the statute under which he was prosecuted did not apply to offenses committed before its enactment. n101 It remains to be seen how broadly the decision will apply. [\*456] ¶ Meanwhile, other challenges to post-2001 terrorism policies also have failed, and the Supreme Court has declined to review those rulings as well. For example, the lower courts have rebuffed claims asserted by foreign nationals who were subject to extraordinary rendition. In Arar v. Ashcroft, n102 the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of constitutional and statutory challenges brought by a plaintiff holding dual citizenship in Canada and the United States. n103 And in Mohamed v. Jeppesen Dataplan, Inc., n104 the U.S. Court of Appeals for the Ninth Circuit held that the state-secrets privilege barred a separate challenge to extraordinary rendition brought by citizens of Egypt, Morocco, Ethiopia, Iraq, and Yemen. n105 Unlike Arar, in which the defendants were federal officials, n106 this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture. n107 Although at least four judges on the en banc courts dissented from both rulings, n108 the Supreme Court declined to review either case. n109

#### Court restrictions on indefinite detention cause an earthquake in separation of powers

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What the Supreme Court has done is carve itself a seat at the table. It has intimated, without ever deciding, that a constitutional basis for its actions exists—in addition to the statutory bases on which it decided the cases—meaning that its authority over overseas detentions may be an inherent feature of judicial power, not a policy question on which the legislature and executive can work their will. Whether the votes exist on the court to go this extra step we will find out soon enough. But the specter of a vastly different judicial posture in this area now haunts the executive branch—one in which the justices assert an inherent authority to review executive detention and interrogation practices, divine rights to apply with that jurisdiction based on due process and vaguely worded international humanitarian law principles not clearly implemented in U.S. law, and allow their own power to follow the military’s anywhere in the world. Such a posture would constitute an earthquake in the relationships among all three branches of government, and the doctrinal seeds for it have all been planted. Whether they ultimately take root depends on factors extrinsic to the war on terror—particularly the future composition of a Supreme Court now closely divided on these questions. It will also pivot on the manner in which the political branches posture the legal foundations of the war in the future. Building a strong legislative architecture now may be the only way to avert a major expansion of judicial power over foreign policy and warfare.

#### Deference is vital to effective executive crisis response

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

 [\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

 [\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

#### Effective executive response is key to prevent global crises

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And while Obama plans to dedicate his efforts to the domestic agenda, a number of brewing international crises are sure to steal his attention and demand his time. Here are a few of the foreign policy issues that, like it or not, may force Obama to divert his focus from domestic concerns in this new term.¶ Syria unraveling: The United Nations says more than 60,000 people have already died in [a civil war t](http://www.cnn.com/2013/01/02/world/meast/syria-civil-war/index.html)hat the West has, to its shame, done little to keep from spinning out of control. Washington[has warned](http://www.nytimes.com/2012/12/04/world/middleeast/nato-prepares-missile-defenses-for-turkey.html?_r=0) that the use of chemical or biological weapons might force its hand. But the regime [may have already used them](http://www.reuters.com/article/2013/01/19/us-syria-chemical-newspaper-idUSBRE90I0JV20130119). The West has failed to nurture a moderate force in the conflict. Now Islamist extremists are growing [more powerful](http://www.al-monitor.com/pulse/originals/2013/01/fighter-syria-aleppo-turkey.html) within the opposition. The chances are growing that worst-case scenarios will materialize. Washington will not be able to endlessly ignore this dangerous war.¶ Egypt and the challenge of democracy: What happens in Egypt strongly influences the rest of the Middle East -- and hence world peace -- which makes it all the more troubling to see liberal democratic forces lose battle after battle for political influence against Islamist parties, and to hear blatantly [anti-Semitic speech](http://www.nytimes.com/2013/01/15/world/middleeast/egypts-leader-morsi-made-anti-jewish-slurs.html) coming from the mouth of Mohammed Morsy barely two years before he became president.¶ Iran's nuclear program: Obama took office promising a new, more conciliatory effort to persuade Iran to drop its nuclear enrichment program. Four years later, he has succeeded in implementing international sanctions, but Iran has continued enriching uranium, leading [United Nations inspectors](http://news.yahoo.com/un-credible-evidence-iran-working-nuke-weapons-153544271.html) to find "credible evidence" that Tehran is working on nuclear weapons. Sooner or later the moment of truth will arrive. If a deal is not reached, Obama will have to decide if he wants to be the president on whose watch a nuclear weapons race was unleashed in the most dangerous and unstable part of the world.¶ North Africa terrorism: A much-neglected region of the world is becoming increasingly difficult to disregard. In recent days, [Islamist extremists](http://edition.cnn.com/2013/01/18/opinion/ghitis-algeria-hostage-crisis/index.html?hpt=op_t1) took American and other hostages in Algeria and France sent its military to fight advancing Islamist extremists in Mali, a country that once represented optimism for democratic rule in Africa, now overtaken by militants who are potentially turning it into a staging ground for international terrorism.¶ Russia repression: As Russian President Vladimir Putin succeeds in [crushing opposition](http://www.france24.com/en/20121027-russian-opposition-leaders-detained-protest-navalny-udaltsov-vladimir-putin) to his [increasingly authoritarian](http://www.freedomhouse.org/report/freedom-world/2013/russia)rule, he and his allies are making anti-American words and policies their favorite theme. A recent ban on adoption of Russian orphans by American parents is only the most vile example. But Washington needs Russian cooperation to achieve its goals at the U.N. regarding Iran, Syria and other matters. It is a complicated problem with which Obama will have to wrestle.¶ Then there are the long-standing challenges that could take a turn for the worse, such as the Israeli-Palestinian conflict. Obama may not want to wade into that morass again, but events may force his hand.¶ And there are the so-called "black swans," events of low probability and high impact. [There is talk](http://www.economist.com/news/asia/21569757-armed-clashes-over-trivial-specks-east-china-sea-loom-closer-drums-war) that China and Japan could go to war over a cluster of disputed islands.¶ A war between two of the world's largest economies could prove devastating to the global economy, just as a sudden and dramatic reversal in the fragile Eurozone economy could spell disaster. Japan's is only the hottest of many territorial disputes between China and its Asian neighbors. Then there's North Korea with its nuclear weapons.¶ We could see regions that have garnered little attention come back to the forefront, such as Latin America, where conflict could arise in a post-Hugo Chavez Venezuela.¶ The president -- and the country -- could also benefit from unexpectedly positive outcomes. Imagine a happy turn of events in Iran, a breakthrough between Israelis and Palestinians, the return of prosperity in Europe, a successful push by liberal democratic forces in the Arab uprising countries, which could create new opportunities, lowering risks around the world, easing trade, restoring confidence and improving the chances for the very agenda Obama described in his inaugural speech.¶ The aspirations he expressed for America are the ones he should express for our tumultuous planet. Perhaps in his next big speech, the State of the Union, he can remember America's leadership position and devote more attention to those around the world who see it as a source of inspiration and encouragement.¶ After all, in this second term Obama will not be able to devote as small a portion of his attention to foreign policy as he did during his inaugural speech.¶ International disengagement is not an option. As others before Obama have discovered, history has a habit of toying with the best laid, most well-intentioned plans of American presidents.

### 5

#### Text: The President of the United States federal government should issue an executive order and public proclamation that ceases indefinite detention policy; the U.S. Congress should appropriate all necessary funds.

#### We’ll clarify.

#### Counterplan solves cred and the case

Adrian Vermeule 7, Harvard law prof - AND - Eric Posner - U Chicago law, The Credible Executive, 74 U. Chi. L. Rev. 865

\*We do not endorse gendered language

The Madisonian system of oversight has not totally failed. Some- times legislators overcome the temptation to free ride; sometimes they invest in protecting the separation of powers or legislative preroga- tives. Sometimes judges review exercises of executive discretion, even during emergencies. But often enough, legislators and judges have no real alternative to letting executive officials exercise discretion un- checked. The Madisonian system is a partial failure; compensating mechanisms must be adopted to fill the area of slack, the institutional gap between executive discretion and the oversight capacities of other institutions. Again, the magnitude of this gap is unclear, but plausibly it is quite large; we will assume that it is. It is often assumed that this partial failure of the Madisonian sys- tem unshackles and therefore benefits ill-motivated executives. This is grievously incomplete. The failure of the Madisonian system harms the well-motivated executive as much as it benefits the ill-motivated one. Where Madisonian oversight fails, the well-motivated executive is a victim of his own power. Voters, legislators, and judges will be wary of granting further discretion to an executive whose motivations are un- certain and possibly nefarious. The partial failure of Madisonian over- sight thus threatens a form of inefficiency, a kind of contracting failure that makes potentially everyone, including the voters, worse off. Our central question, then, is what the well-motivated executive can do to solve or at least ameliorate the problem. The solution is for the executive to complement his (well-motivated) first-order policy goals with second-order mechanisms for demonstrating credibility to other actors. We thus do not address the different question of what voters, legislators, judges, and other actors should do about an executive who is ill motivated and known to be so. That project involves shoring up or replacing the Madisonian system to block executive dictatorship. Our project is the converse of this, and involves finding new mechanisms to help the well-motivated executive credibly distinguish himself as such. ¶ IV. EXECUTIVE SIGNALING: LAW AND MECHANISMS ¶ We suggest that the executive’s credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well- motivated ones, thus distinguishing themselves from their ill- motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations. ¶ This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by “government” or govern- ment officials. In constitutional theory, it is often suggested that consti- tutions represent an attempt by “the people” to bind “themselves” against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which govern- ments commit themselves not to expropriate investments or to exploit their populations.72 Whether or not this picture is coherent,73 it is not the question we examine here, although some of the relevant consid- erations are similar.74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. ¶ Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitu- tional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these con- straints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types. ¶ We begin with some relevant law, then examine a set of possible mechanisms—emphasizing both the conditions under which they might succeed and the conditions under which they might not—and conclude by examining the costs of credibility. ¶ A. A Preliminary Note on Law and Self-Binding ¶ Many of our mechanisms are unproblematic from a legal per- spective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self- binding.75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense pro- curement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of self-binding:

#### Presidential commitments credible

Marvin Kalb 13, Nonresident Senior Fellow at Foreign Policy, James Clark Welling Presidential Fellow, The George Washington University Edward R. Murrow Professor of Practice (Emeritus), Kennedy School of Government, Harvard University, 2013, "The Road to War," book,pg. 7-8, www.brookings.edu/~/media/press/books/2013/theroadtowar/theroadtowar\_samplechapter.pdf

As we learned in Vietnam and in the broader Middle East, a presidential commitment could lead to war, based on miscalculation, misjudgment, or mistrust. It could also lead to reconciliation. We live in a world of uncertainty, where even the word of a president is now questioned in wider circles of critical commentary. On domestic policy, Washington often resembles a political circus detached from reason and responsibility. But on foreign policy, when an international crisis erupts and some degree of global leadership is required, the word or commitment of an American president still represents the gold standard, even if the gold does not glitter as once it did.

### Terror

#### No ability to conduct large scale attacks

Peter Bergen 9/9/13, has been a professor in terrorism and US national security at Harvard and Johns Hopkins, the director of the national security studies program at the New America Foundation, AND Bruce Hoffman, a professor at Georgetown University’s ¶ Edmund A. Walsh School of Foreign Service and the director of both the Center for Security Studies, and the Security Studies Program, AND Michael Hurley, the president of Team 3i LLC, an ¶ international strategy company, and advisor for the Bipartisan ¶ Policy Center’s Homeland Security Project, AND Erroll Southers, associate director of research ¶ transition at the Department of Homeland Security’s ¶ National Center for Risk and Economic Analysis of Terrorism ¶ Events (CREATE) at the University of Southern California, ¶ where he is an adjunct professor in the Sol Price School ¶ of Public Policy¶ 9/9/13, "Jihadist Terrorism: A Threat Assesment," Bipartisan Policy Center, http://bipartisanpolicy.org/sites/default/files/Jihadist%20Terrorism-A%20Threat%20Assesment\_0.pdf

Al-Qaeda hasn’t conducted a successful attack in the West ¶ since the bombings on London’s transportation system that ¶ killed 52 commuters eight years ago, and it hasn’t carried ¶ out an attack in the United States for the past twelve years.43¶ However, al-Qaeda does continue to provide strategic ¶ guidance to its affiliates and ideological followers, and ¶ remains capable of carrying out small-scale operations in ¶ Afghanistan and Pakistan. ¶ The killing of dozens of high-level al-Qaeda militants—¶ foremost among them bin Laden in May 2011—has dealt ¶ a serious blow to al-Qaeda’s core leadership. Despite ¶ concerns that bin Laden’s “martyrdom” would provoke a ¶ rash of attacks in the West or against Western interests in ¶ the Muslim world, none ever materialized. Meanwhile, CIA ¶ drone strikes during President Obama’s tenure alone have ¶ killed 33 of al-Qaeda’s leaders in Pakistan, according to a ¶ count by the New America Foundation. A month after bin ¶ Laden’s death, senior al-Qaeda operative Ilyas Kashmiri was ¶ killed in a U.S. drone strike in Pakistan.44 Two months later, ¶ another U.S. drone strike killed Atiyah Abdul Rahman, who ¶ had become al-Qaeda’s deputy after Zawahiri assumed bin ¶ Laden’s role.45 In 2012, seven militants identified in reliable ¶ media reports as senior al-Qaeda militants were killed in ¶ U.S. drone strikes in Pakistan, including Abu Yahya al-Libi, ¶ who had replaced Rahman as al-Qaeda’s number two.46¶ As the leaders of al-Qaeda have been forced to focus ¶ on survival, their ability to plan and conduct attacks ¶ has diminished.

#### Detention reforms kill credible info-security---kills allied coop

Anna-Katherine McGill 12, School of Graduate and Continuing Studies in Diplomacy, Norwich University, David Gray, Campbell University, Summer 2012, “Challenges to International Counterterrorism Intelligence Sharing,” <http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf>

It is clear that diplomacy will continue to be a key component in US counterterrorism coalition building. Intelligence sharing, as a by-product of these efforts, will likely improve for as long as trust is maintained or improved and compromises are made in the greater interest of combating the shared threat of terrorism. However, the US is also likely to face continuing foreseeable challenges from the ever expanding breadth of its international allies, its increasing dependence on its counterterrorism coalitions, and unpredictable setbacks to international trust like WikiLeaks. There are ways, however, to allay the impact of these challenges if not overcome them all together. ¶ With regards to traditional allies the United States must continue to negotiate a close working relationship with its NATO, EU, and 5 EYES partners. Great strides have been made but future disagreements on policy, tactics, and strategy for the war on terrorism are inevitable. The best way to prepare for such future issues is to continue to foster a positive collaborative relationship with these nations so that mutual trust will prevent arguments from threatening the survival of the alliance. This means that the US must carefully manage its international position. It cannot exploit legal loopholes like exporting suspects to other nations for questionable interrogations; it cannot bully its friends nor act unilaterally against their wishes; and it must hold itself to high moral standards befitting a liberal democracy.¶ For new and non-traditional allies, Reveron states that “the long-term challenge for policymakers will be to convert these short-term tactical relationships into meaningful alliances while protecting against counterintelligence threats” (467). Traditional alliances have to start somewhere and over time these new relationships can turn in to tried and tested cooperation. In order to further develop these relationships the US should attempt to iron out policy differences in other arenas rather than turn a blind eye to them and continue providing technical and material support to their development of effective intelligence programs. The US should not however hold CT cooperation supreme over other critical issues such as nuclear and conventional arms proliferation and human rights violations. Nations like Iran and Syria may be helpful in the short term and for limited purposes but this does not negate their less desirable practices.¶ Finally, the US will also need to look inward to prevent more classified information leaks. The US needs to be more critical in the issuance of security clearances, employ digital monitoring of who is downloading information and in what amount to prevent mass dumps, and give greater importance to curtailing the “insider threat” of US citizens leaking information overall. Improving intelligence security will help to mitigate the blowback from WikiLeaks and will go a long way to advancing US credibility and trust building.

#### Weak detention responses emboldens terrorists

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3. Terrorism prosecutions create the conditions for more terrorism. The treatment of a national security problem as a criminal justice issue has consequences that imperil Americans. To begin with, there are the obvious numerical and motivational results. As noted above, the justice system is simply incapable, given its finite resources, of meaningfully countering the threat posed by international terrorism. Of equal salience, prosecution in the justice system actually increases the threat because of what it conveys to our enemies. Nothing galvanizes an opposition, nothing spurs its recruiting, like the combination of successful attacks and a conceit that the adversary will react weakly. (Hence, bin Laden’s well-known allusion to people’s instinctive attraction to the “strong horse” rather than the “weak horse,” and his frequent citation to the U.S. military pullout from Lebanon after Hezbollah’s 1983 attack on the marine barracks, and from Somalia after the 1993 “Black Hawk Down” incident). For militants willing to immolate themselves in suicide-bombing and hijacking operations, mere prosecution is a provocatively weak response. Put succinctly, where they are the sole or principal response to terrorism, trials in the criminal justice system inevitably cause more terrorism: they leave too many militants in place and they encourage the notion that the nation may be attacked with relative impunity.

#### No scenario for nuclear terror---consensus of experts

Matt Fay ‘13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

#### Terrorists aren’t pursuing

Wolfe 12 – Alan Wolfe is Professor of Political Science at Boston College. He is also a Senior Fellow with the World Policy Institute at the New School University in New York. A contributing editor of The New Republic, The Wilson Quarterly, Commonwealth Magazine, and In Character, Professor Wolfe writes often for those publications as well as for Commonweal, The New York Times, Harper's, The Atlantic Monthly, The Washington Post, and other magazines and newspapers. March 27, 2012, "Fixated by “Nuclear Terror” or Just Paranoia?" [http://www.hlswatch.com/2012/03/27/fixated-by-“nuclear-terror”-or-just-paranoia-2/](http://www.hlswatch.com/2012/03/27/fixated-by-)

If one were to read the most recent unclassified report to Congress on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions, it does have a section on CBRN terrorism (note, not WMD terrorism). The intelligence community has a very toned down statement that says “several terrorist groups … probably remain interested in [CBRN] capabilities, but not necessarily in all four of those capabilities. … mostly focusing on low-level chemicals and toxins.” They’re talking about terrorists getting industrial chemicals and making ricin toxin, not nuclear weapons. And yes, Ms. Squassoni, it is primarily al Qaeda that the U.S. government worries about, no one else. The trend of worldwide terrorism continues to remain in the realm of conventional attacks. In 2010, there were more than 11,500 terrorist attacks, affecting about 50,000 victims including almost 13,200 deaths. None of them were caused by CBRN hazards. Of the 11,000 terrorist attacks in 2009, none were caused by CBRN hazards. Of the 11,800 terrorist attacks in 2008, none were caused by CBRN hazards.

\*No internal link – Ayson’s about terror from Southeast Asia

#### Very low probability

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, 2010 Available Online to Subscribing Institutions via InformaWorld)

There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability?

### Credibility

#### PRISM destroyed soft power / credibility

Migranyan 7/5 (Andranik is the director of the Institute for Democracy and Cooperation in New York. He is also a professor at the Institute of International Relations in Moscow, a former member of the Public Chamber and a former member of the Russian Presidential Council. “Scandals Harm U.S. Soft Power,” 2013, http://nationalinterest.org/commentary/scandals-harm-us-soft-power-8695)

For the past few months, the United States has been rocked by a series of scandals. It all started with the events in Benghazi, when Al Qaeda-affiliated terrorists attacked the General Consulate there and murdered four diplomats, including the U.S. ambassador to Libya. Then there was the scandal exposed when it was revealed that the Justice Department was monitoring the calls of the Associated Press. The Internal Revenue Service seems to have targeted certain political groups. Finally, there was the vast National Security Agency apparatus for monitoring online activity revealed by Edward Snowden. Together, these events provoke a number of questions about the path taken by contemporary Western societies, and especially the one taken by America.¶ Large and powerful institutions, especially those in the security sphere, have become unaccountable to the public, even to representatives of the people themselves. Have George Orwell’s cautionary tales of total government control over society been realized?¶ At the end of the 1960s and the beginning of the 1970s, my fellow students and I read Orwell’s 1984 and other dystopian stories and believed them to portray fascist Germany or the Soviet Union—two totalitarian regimes—but today it has become increasingly apparent that Orwell, Huxley and other dystopian authors had seen in their own countries (Britain and the United States) certain trends, especially as technological capabilities grew, that would ultimately allow governments to exert total control over their societies. The potential for this type of all-knowing regime is what Edward Snowden revealed, confirming the worst fears that the dystopias are already being realized.¶ On a practical geopolitical level, the spying scandals have seriously tarnished the reputation of the United States. They have circumscribed its ability to exert soft power; the same influence that made the U.S. model very attractive to the rest of the world. This former lustre is now diminished. The blatant everyday intrusions into the private lives of Americans, and violations of individual rights and liberties by runaway, unaccountable U.S. government agencies, have deprived the United States of its authority to dictate how others must live and what others must do. Washington can no longer lecture others when its very foundational institutions and values are being discredited—or at a minimum, when all is not well “in the state of Denmark.”¶ Perhaps precisely because not all is well, many American politicians seem unable to adequately address the current situation. Instead of asking what isn’t working in the government and how to ensure accountability and transparency in their institutions, they try, in their annoyance, to blame the messenger—as they are doing in Snowden’s case. Some Senators hurried to blame Russia and Ecuador for anti-American behavior, and threatened to punish them should they offer asylum to Snowden.¶ These threats could only cause confusion in sober minds, as every sovereign country retains the right to issue or deny asylum to whomever it pleases. In addition, the United States itself has a tradition of always offering political asylum to deserters of the secret services of other countries, especially in the case of the former Soviet Union and other ex-socialist countries. In those situations, the United States never gave any consideration to how those other countries might react—it considered the deserters sources of valuable information. As long as deserters have not had a criminal and murderous past, they can receive political asylum in any country that considers itself sovereign and can stand up to any pressure and blackmail.¶ Meanwhile, the hysteria of some politicians, if the State Department or other institutions of the executive branch join it, can only accelerate the process of Snowden’s asylum. For any country he might ask will only be more willing to demonstrate its own sovereignty and dignity by standing up to a bully that tries to dictate conditions to it. In our particular case, political pressure on Russia and President Putin could turn out to be utterly counterproductive. I believe that Washington has enough levelheaded people to understand that fact, and correctly advise the White House. The administration will need sound advice, as many people in Congress fail to understand the consequences of their calls for punishment of sovereign countries or foreign political leaders that don’t dance to Washington’s tune.¶ Judging by the latest exchange between Moscow and Washington, it appears that the executive branches of both countries will find adequate solutions to the Snowden situation without attacks on each other’s dignity and self-esteem. Russia and the United States are both Security Council members, and much hinges on their decisions, including a slew of common problems that make cooperation necessary.¶ Yet the recent series of scandals has caused irreparable damage to the image and soft power of the United States. I do not know how soon this damage can be repaired. But gone are the days when Orwell was seen as a relic of the Cold War, as the all-powerful Leviathan of the security services has run away from all accountability to state and society. Today the world is looking at America—and its model for governance—with a more critical eye.

#### Drones destroy U.S. credibility---outweighs detention

Stephen Holmes 13, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

On the basis of undisclosed evidence, evaluated in unspecified procedures by rotating personnel with heterogeneous backgrounds, the US is continuing to kill those it classifies as suspected terrorists in Somalia, Yemen and Pakistan. It has certainly been eliminating militants who had nothing to do with 9/11, including local insurgents fighting local battles who, while posing no realistic threat to America, had allied themselves opportunistically with international anti-American jihadists. By following the latter wherever they go, the US is allowing ragtag militants to impose ever new fronts in its secret aerial war. Mistakes are made and can’t be hidden, at least not from local populations. Nor can the resentment of surrounding communities be easily assuaged. This is because, even when it finds its target, the US is killing not those who are demonstrably guilty of widely acknowledged crimes but rather those who, it is predicted, will commit crimes in the future. Of course, the civilian populations in the countries where these strikes take place will never accept the hunches of CIA or Pentagon futurologists. And so they will never accept American claims about the justice of Obama’s slimmed-down war on terror, but instead claim the right of self-defence, and this would be true even if drone operators could become as error-free as Brennan once claimed they already are. But of course collateral damage and mistaken-identity strikes will continue. They are inevitable accompaniments of all warfare. And they, too, along with intentional killings that are never publicly justified, will communicate resoundingly to the world that the arbitrary and unpredictable killing of innocent Muslims falls within America’s commodious concept of a just war.

The rage such strikes incite will be all the greater if onlookers believe, as seems likely, that the killing they observe makes relatively little contribution to the safety of Americans. Indeed, this is already happening, which is the reason that the drone, whatever its moral superiority to land armies and heavy weaponry, has replaced Guantánamo as the incendiary symbol of America’s indecent callousness towards the world’s Muslims. As Bush was the Guantánamo president, so Obama is the drone president. This switch, whatever Obama hoped, represents a worsening not an improvement of America’s image in the world.

#### Credibility not key—their ev’s stuck in the Cold War

Stephen M. Walt 12, Robert and Renée Belfer professor of international relations at Harvard University, "Why are U.S. leaders so obsessed with credibility?" September 11, Foreign Policy, walt.foreignpolicy.com/posts/2012/09/11/the\_credibility\_fetish

What's the biggest mistake the United States has made since the end of the Cold War? Invading Iraq? Helping screw up the Israel-Palestine peace process? Missing the warning signs for 9/11, and then overreacting to the actual level of danger that Al Qaeda really posed? Not recognizing we had a bubble economy and a corrupt financial industry until after the 2007 meltdown?¶ Those are all worthy candidates, and I'm sure readers can think of others. But today I want to propose another persistent error, which lies at the heart of many of the missed opportunities or sins of commission that we made since the Berlin Wall came down. It is in essence a conceptual mistake: a failure to realize just how much the world changed when the Soviet Union collapsed, and a concomitant failure to adjust our basic approach to foreign policy appropriately.¶ I call this error the "credibility fetish." U.S. leaders have continued to believe that our security depends on convincing both allies and adversaries that we are steadfast, loyal, reliable, etc., and that our security guarantees are iron-clad. It is a formula that reinforces diplomatic rigidity, because it requires us to keep doing things to keep allies happy and issuing threats (or in some cases, taking actions) to convince foes that we are serious. And while it might have made some degree of sense during the Cold War, it is increasingly counterproductive today.¶ One could argue that credibility did matter during the Cold War. The United States did face a serious peer competitor in those days, and the Soviet Union did have impressive military capabilities. Although a direct Soviet attack on vital U.S. interests was always unlikely, one could at least imagine certain events that might have shifted the global balance of power dramatically. For example, had the Soviet Union been able to conquer Western Europe or the Persian Gulf and incorporate these assets into its larger empire, it would have had serious consequences for the United States. Accordingly, U.S. leaders worked hard to make sure that the U.S. commitment to NATO was credible, and we did similar things to bolster U.S. credibility in Asia and the Gulf.¶ Of course, we probably overstated the importance of "credibility" even then. Sloppy analogies like the infamous "domino theory" helped convince Americans that we had to fight in places that didn't matter (e.g., Vietnam) in order to convince everyone that we'd also be willing to fight in places that did. We also managed to convince ourselves that credible nuclear deterrence depended on having a mythical ability to "prevail" in an all-out nuclear exchange, even though winning would have had little meaning once a few dozen missiles had been fired.¶ Nonetheless, in the rigid, bipolar context of the Cold War, it made sense for the United States to pay some attention to its credibility as an alliance leader and security provider. But today, the United States faces no peer competitor, and it is hard to think of any single event that would provoke a rapid and decisive shift in the global balance of power. Instead of a clear geopolitical rival, we face a group of medium powers: some of them friendly (Germany, the UK, Japan, etc.) and some of them partly antagonistic (Russia, China). Yet Russia is economically linked to our NATO allies, and China is a major U.S. trading partner and has been a major financier of U.S. debt. This not your parents' Cold War. There are also influential regional powers such as Turkey, India, or Brazil, with whom the U.S. relationship is mixed: We agree on some issues and are at odds on others. And then there are clients who depend on U.S. protection (Israel, Saudi Arabia, Afghanistan, Taiwan, etc.) but whose behavior often creates serious headaches for whoever is in the White House.¶ As distinguished diplomat Chas Freeman recently commented, "the complexity and dynamism of the new order place a premium on diplomatic agility. Stolid constancy and loyalty to pre-existing alliance relationship are not the self-evident virtues they once were. We should not be surprised that erstwhile allies put their own interest ahead of ours and act accordingly. Where it is to our long-term advantage, we should do the same."¶ What might this mean in practice? As I've noted repeatedly, it means beginning by recognizing that the United States is both very powerful and very secure, and that there's hardly anything that could happen in the international system that would alter the global balance of power overnight. The balance is shifting, to be sure, but these adjustments will take place over the course of decades. Weaker states who would like U.S. protection need it a lot more than we need them, which means our "credibility" is more their problem than ours. Which in turn means that if other states want our help, they should be willing to do a lot to convince us to provide it.¶ Instead of obsessing about our own "credibility," in short, and bending over backwards to convince the Japanese, South Koreans, Singaporeans, Afghans, Israelis, Saudis, and others that we will do whatever it takes to protect them, we ought to be asking them what they are going to do for themselves, and also for us. And instead of spending all our time trying to scare the bejeezus out of countries like Iran (which merely reinforces their interest in getting some sort of deterrent), we ought to be reminding them over and over that we have a lot to offer and are open to better relations, even if the clerical regime remains in power and maybe even if -- horrors! -- it retains possession of the full nuclear fuel cycle (under IAEA safeguards). If nothing else, adopting a less confrontational posture is bound to complicate their own calculations.¶ This is not an argument for Bush-style unilateralism, or for a retreat to Fortress America. Rather, it is a call for greater imagination and flexibility in how we deal with friends and foes alike. I'm not saying that we should strive for zero credibility, of course; I'm merely saying that we'd be better off if other states understood that our credibility was more conditional. In other words, allies need to be reminded that our help is conditional on their compliance with our interests (at least to some degree) and adversaries should also be reminded that our opposition is equally conditional on what they do. In both cases we also need to recognize that we are rarely going to get other states to do everything we want. Above all, it is a call to recognize that our geopolitical position, military power, and underlying economic strength give us the luxury of being agile in precisely the way that Freeman depicts.¶ Of course, some present U.S. allies would be alarmed by the course I'm suggesting, because it would affect the sweetheart deals they've been enjoying for years. They'll tell us they are losing confidence in our leadership, and they'll threaten to go neutral, or maybe even align with our adversaries. Where possible, they will enlist Americans who are sympathetic to their plight to pressure on U.S. politicians to offer new assurances. In most cases, however, such threats don't need to be taken seriously. And we just have to patiently explain to them that we're not necessarily abandoning them, we are merely 1) making our support more conditional on their cooperation with us on things we care about, and 2) remaining open to improving relations with other countries, including some countries that some of our current allies might have doubts about. I know: It's a radical position: we are simply going to pursue the American national interest, instead of letting our allies around the world define it for us.¶ The bottom line is that the United States is in a terrific position to play realpolitik on a global scale, precisely because it needs alliance partners less than most of its partners do. And even when allies are of considerable value to us, we still have the most leverage in nearly every case. As soon as we start obsessing about our credibility, however, we hand that leverage back to our weaker partners and we constrain our ability to pursue meaningful diplomatic solutions to existing conflicts. Fetishizing credibility, in short, is one of the reasons American diplomacy has achieved relatively little since the end of the Cold War.

#### Best evidence concludes no legitimacy impact

Brooks & Wohlforth 8 – Stephen G. Brooks, Assistant Professor of Government at Dartmouth, and William C. Wohlforth, Associate Professor of Government at Dartmouth, 2008, World Out of Balance: International Relations and the Challenge of American Primacy, p. 201-206

First, empirical studies find no clear relationship between U.S. rulebreaking, legitimacy, and the continued general propensity of other governments to comply with the overall institutional order. Case studies of U.S. unilateralism—that is, perceived violations of the multilateral principle underlying the current institutional order—reach decidedly mixed results.74 Sometimes unilateralism appears to impose costs on the United States that may derive from legitimacy problems; in other cases, these acts appear to win support internationally and eventually are accorded symbolic trappings of legitimacy; in yet others, no effect is discernable. Similar results are reported in detailed analyses of the most salient cases of U.S. noncompliance with international law, which, according to several studies, is as likely to result in a “new multilateral agreement and treaties [that] generally tilt towards U.S. policy preferences” as it is to corrode the legitimacy of accepted rules.75

The contestation created by the Bush administration’s “new unilateralism,” on the one hand, and the “new multilateralism” represented by other states’ efforts to develop new rules and institutions that appear to constrain the United States, on the other hand, fits the historical pattern of the indirect effect of power on law. Highlighting only the details of the struggle over each new rule or institution may deflect attention from the structural influence of the United States on the overall direction of change. For example, a focus on highly contested issues in the UN, such as the attempt at a second resolution authorizing the invasion of Iraq, fails to note how the institution’s whole agenda has shifted to address concerns (e.g., terrorism, proliferation) that the United States particularly cares about. The secretary-general’s Highlevel Panel on Threats, Challenges and Change endorsed a range of U.S.-supported positions on terrorism and proliferation.76 International legal scholars argue that the United States made measurable headway in inculcating new rules of customary law to legitimate its approach to fighting terrorism and containing “rogue states.”77 For example, UN Security Council Resolution 1373 imposed uniform, mandatory counterterrorist obligations on all member states and established a committee to monitor compliance.

That said, there is also evidence of resistance to U.S. attempts to rewrite rules or exempt itself from rules. Arguably the most salient example of this is the International Criminal Court (ICC). During the negotiations on the Rome Convention in the late 1990s, the United States explicitly sought to preserve great-power control over ICC jurisdiction. U.S. representatives argued that the United States needed protection from a more independent ICC in order to continue to provide the public good of global military intervention. When this logic failed to persuade the majority, U.S. officials shifted to purely legal arguments, but, as noted, these foundered on the inconsistency created by Washington’s strong support of war crimes tribunals for others. The Rome Convention rejected the U.S. view in favor of the majority position granting the ICC judicial panel authority to refer cases to court’s jurisdiction.78 By 2007, 130 states had signed the treaty and over 100 were full-fledged parties to it.

President Clinton signed the treaty, but declined to submit it to the Senate for ratification. The Bush administration “unsigned” it in order legally to be able to take action to undermine it. The United States then persuaded over 75 countries to enter into agreements under which they undertake not to send any U.S. citizen to the ICC without the United States’ consent; importantly, these agreements do not obligate the United States to investigate or prosecute any American accused of involvement in war crimes. This clearly undermines the ICC, especially given that about half the states that have signed these special agreements with the United States are also parties to the Rome Statute. 79 At the same time, the EU and other ICC supporters pressured governments not to sign special agreements with the United States, and some 45 have refused to do so—about half losing U.S. military assistance as a result. In April 2005, the United States chose not to veto a UN Security Council resolution referring the situation in Darfur, Sudan, to the ICC. To many observers, this suggests that inconsistency may yet undermine U.S. opposition to the court.80 If the U.S. campaign to thwart the court fails, and there is no compromise solution that meets some American concerns, the result will be a small but noticeable constraint: U.S. citizens involved in what might be construed as war crimes and who are not investigated and prosecuted by the U.S. legal system may have to watch where they travel.

The upshot as of 2007 was something of a stalemate on the ICC, demonstrating the limits of both the United States’ capability to quash a new legal institution it doesn’t like and the Europeans’ ability to legitimize such an institution without the United States’ participation. Similar stalemates characterize other high-profile arguments over other new international legal instruments, such as the Kyoto Protocol on Climate Change and the Ottawa Landmine Convention. Exactly as constructivists suggest, these outcomes lend credence to the argument that power does not translate unproblematically into legitimacy. What the larger pattern of evidence on rule breaking shows, however, is that this is only one part of the story; the other part involves rule breaking with few, if any, legitimacy costs, and the frequent use of go-it-alone power to revise or create rules.

AN EROSION OF THE ORDER?

The second general evidence pattern concerns whether fallout from the unpopular U.S. actions on ICC, Kyoto and Ottawa, Iraq, and many other issues have led to an erosion of the legitimacy of the larger institutional order. Constructivist theory identifies a number of reasons why institutional orders are resistant to change, so strong and sustained action is presumably necessary to precipitate a legitimacy crisis that might undermine the workings of the current order. While aspects of this order remain controversial among sections of the public and elite both in the United States and abroad, there is little evidence of a trend toward others opting out of the order or setting up alternatives. Recall also that the legitimacy argument works better in the economic than in the security realm. It is also in the economic realm that the United States arguably has the most to lose. Yet it is hard to make the empirical case that U.S. rule violations have undermined the institutional order in the economic realm. Complex rules on trade and investment have underwritten economic globalization. The United States generally favors these rules, has written and promulgated many of them, and the big story of the 1990s and 2000s is their growing scope and ramified nature—in a word, their growing legitimacy. On trade, the WTO represents a major strengthening of the GATT rules that the United States pushed for (by, in part, violating the old rules to create pressure for the upgrade). As of 2007, it had 149 members, and the only major economy remaining outside was Russia’s. And notwithstanding President Putin’s stated preference for an “alternative” WTO, Russian policy focused on accession.81 To be sure, constructivists are right that the WTO, like other rational-legal institutions, gets its legitimacy in part from the appearance of independence from the major powers.82 Critical analysts repeatedly demonstrate, however, that the organization’s core agenda remains powerfully influenced by the interests of the United States.83

Regarding international finance, the balance between the constraining and enabling properties of rules and institutions is even more favorable to the United States, and there is little evidence of general legitimacy costs. The United States retains a privileged position of influence within the International Monetary Fund and the World Bank. An example of how the scope of these institutions can expand under the radar screen of most legitimacy scholarship is International Center for Settlement of Investment Disputes (ICSID)—the major dispute settlement mechanism for investment treaties. Part of theWorld Bank group of institutions, it was established in 1966, and by 1991 it had considered only 26 disputes. With the dramatic growth in investment treaties in the 1990s, however, the ICSID came into its own. Between 1998 and 2004, over 121 disputes were registered with the Center.84 This increase reflects the rapidly growing scope of international investment law. And these new rules and treaties overwhelmingly serve to protect investors’ rights, in which the United States has a powerful interest given how much it invests overseas.

Looking beyond the economic realm, the evidence simply does not provide a basis for concluding that serial U.S. rule-breaking imposed general legitimacy costs sufficient to erode the existing order. On the contrary, it suggests a complex and malleable relationship between rule breaking, legitimacy, and compliance with the existing order that opens up numerous opportunities for the United States to use its power to change rules and limit the legitimacy costs of breaking rules. The evidence also suggests that just as rules do not automatically constrain power, power does not always smoothly translate into legitimacy. As our review of the ICC issue showed, the United States is not omnipotent, and its policies can run afoul of the problems of hypocrisy and inconsistency that constructivists and legal scholars identify. Indeed, neither the theory nor the evidence presented in this chapter can rule out the possibility that the United States might have enjoyed much more compliance, and had much more success promulgating its favored rules and quashing undesired rule change, had it not been such a rule breaker or had it pursued compensating strategies more energetically.

#### Diplomacy high --- Obama’s international agenda and effective multilateralism will be implemented even if he isn’t directly involved

Rothkopf ‘11---visiting scholar at Carnegie. Columbia grad (27 July 2011, David, Good news: American political leadership at work ... far from the beltway, http://rothkopf.foreignpolicy.com/posts/2011/07/27/good\_news\_american\_political\_leadership\_at\_work\_far\_from\_the\_beltway)

In this moment of national confusion and public despair with officials in Washington, variations on the following cry have often been heard, "Somewhere in the world there must be an American political leader with a vision of tomorrow, a focus on what is really important and an ability to translate rhetoric into success."

I'm pleased to report that there is. If it has escaped your attention it's because that politician has been on the other side of the world the past couple of weeks advancing American interests and the policies of the president with meaningful results and exceptional skill.

That politician is Secretary of State Hillary Clinton, who is just completing an around-the-world mission that has taken her from the economic frontlines of the eurozone crisis to the markets of tomorrow in Asia. The trip, obscured in the noise around the debt ceiling debate, has been a real triumph for the Obama administration and has revealed that many of its policies over the past two years are now bearing significant fruit. It has also revealed the State Department's deftness and bench-depth in dealing with an Asia agenda that is vastly more important in every respect than virtually anything that has been discussed inside the beltway for months.

Given that most trips by senior officials, even secretaries of state, are more often than not a series of pro forma efforts in diplomatic box-checking, the scope and results of the Clinton trip are worth noting. In Greece, she conveyed at a critical moment, America's unequivocal support for that country's economic recovery plan. When visiting Pakistan, the site of America's most difficult relationship, her performance was even hailed in the local press. The Pakistan Observer carried an article stating, "Drum roll for Hillary because she has hit a home run." Her India visit was also widely hailed producing progress on a number of fronts from counterterror cooperation to opening up investment flows between the two countries. More importantly, it also continued the important work that will be a central legacy of her efforts at State which is the elevation of the U.S.-India relationship to being a centerpiece of America's 21st century foreign policy.

The focus on the U.S.-India relationship is, as the trip also revealed, part of an even broader reorientation of U.S. foreign policy under President Obama. This administration was the first in U.S. history to enter office acknowledging that China was America's most important international counterpart -- one that was both vital partner and challenging rival. But, rather than simply acknowledging this fact and focusing on that relationship, Obama, Clinton and their Asia team have systematically worked to establish a foundation for managing that relationship. What is more their choice was not kow-towing or bluster nor was it the blunt instrument of containment. Rather [they] than have chosen what might be called broad engagement, deepening not only the relationship with Beijing and with potential counter-weights like India, but also systematically and often invisibly working to strengthen ties with many of the smaller countries in Asia.

The approach was clearly illustrated during several other stops on Clinton's trip. In Hong Kong on July 25, she delivered an address to the American Chamber of Commerce which was not only a model for a sweeping, specific, thoughtfully-argued policy address, but which revealed a clear vision for the future of America's relationship with China and the rest of the region. It did not hesitate to press the Chinese to abandon unfair economic practices and to embrace the openness healthy markets demand. It was effectively built around the enumeration of four core principles: markets be open, free, transparent, and fair. But it also underscored the mutual dependence at the center of the relationship and outlined a systematic strategy for how to build upon it. It did not stop there, however. It addressed as effectively as anything I have heard the nature of the current debt-ceiling debate in an effort-successful to date at ensuring continuing Asian market confidence. And it emphasized the importance the United States places on deepening ties elsewhere in Asia, from the Korea-U.S. trade agreement the administration is pushing hard to win passage of to links to ASEAN's rising economies. The full text of the speech is worth a read and appears here.

Prior to the visit to Hong Kong, Clinton attended the ASEAN Regional Forum in Bali, Indonesia, and actively engaged with not only many of the region's leaders but made real substantive progress on issues from re-opening conversations with North Korea to managing a constructive multi-national approach to addressing tensions in the South China Sea. These meetings were also a chance to advance the systematic strengthening of relations with all the region's players, including many that have often been overlooked by the United States. This process has over the past two years included both establishment of formal policy dialogues with many countries in the region and also work on issues from reform in Myanmar to those associated with the Mekong River delta area that have been an important part of the Obama team's Asia strategy.

Regional diplomats not only give Clinton high marks for her efforts and in particular for this trip, but they also cite her top lieutenants including Under Secretary of State Robert Hormats and Assistant Secretary of State Kurt Campbell. One of Washington's most respected senior diplomats specifically cited to me the contributions of Campbell in helping Clinton shape the regional strategy, in managing complex core relationships with China, Japan and Korea but recognizing the importance of other players as well. "He is the most effective assistant secretary of state for East Asia in modern memory," said the official. "No one else even comes close and I have high regard for many of them."

#### No impact to heg

Maher 11---adjunct prof of pol sci, Brown. PhD expected in 2011 in pol sci, Brown (Richard, The Paradox of American Unipolarity: Why the United States May Be Better Off in a Post-Unipolar World, Orbis 55;1)

At the same time, preeminence creates burdens and facilitates imprudent behavior. Indeed, because of America’s unique political ideology, which sees its own domestic values and ideals as universal, and the relative openness of the foreign policymaking process, the United States is particularly susceptible to both the temptations and burdens of preponderance. For decades, perhaps since its very founding, the United States has viewed what is good for itself as good for the world. During its period of preeminence, the United States has both tried to maintain its position at the top and to transform world politics in fundamental ways, combining elements of realpolitik and liberal universalism (democratic government, free trade, basic human rights). At times, these desires have conflicted with each other but they also capture the enduring tensions of America’s role in the world. The absence of constraints and America’s overestimation of its own ability to shape outcomes has served to weaken its overall position. And because foreign policy is not the reserved and exclusive domain of the president---who presumably calculates strategy according to the pursuit of the state’s enduring national interests---the policymaking process is open to special interests and outside influences and, thus, susceptible to the cultivation of misperceptions, miscalculations, and misunderstandings. Five features in particular, each a consequence of how America has used its power in the unipolar era, have worked to diminish America’s long-term material and strategic position. Overextension. During its period of preeminence, the United States has found it difficult to stand aloof from threats (real or imagined) to its security, interests, and values. Most states are concerned with what happens in their immediate neighborhoods. The United States has interests that span virtually the entire globe, from its own Western Hemisphere, to Europe, the Middle East, Persian Gulf, South Asia, and East Asia. As its preeminence enters its third decade, the United States continues to define its interests in increasingly expansive terms. This has been facilitated by the massive forward presence of the American military, even when excluding the tens of thousands of troops stationed in Iraq and Afghanistan. The U.S. military has permanent bases in over 30 countries and maintains a troop presence in dozens more.13 There are two logics that lead a preeminent state to overextend, and these logics of overextension lead to goals and policies that exceed even the considerable capabilities of a superpower. First, by definition, preeminent states face few external constraints. Unlike in bipolar or multipolar systems, there are no other states that can serve to reliably check or counterbalance the power and influence of a single hegemon. This gives preeminent states a staggering freedom of action and provides a tempting opportunity to shape world politics in fundamental ways. Rather than pursuing its own narrow interests, preeminence provides an opportunity to mix ideology, values, and normative beliefs with foreign policy. The United States has been susceptible to this temptation, going to great lengths to slay dragons abroad, and even to remake whole societies in its own (liberal democratic) image.14 The costs and risks of taking such bold action or pursuing transformative foreign policies often seem manageable or even remote. We know from both theory and history that external powers can impose important checks on calculated risk-taking and serve as a moderating influence. The bipolar system of the Cold War forced policymakers in both the United States and the Soviet Union to exercise extreme caution and prudence. One wrong move could have led to a crisis that quickly spiraled out of policymakers’ control. Second, preeminent states have a strong incentive to seek to maintain their preeminence in the international system. Being number one has clear strategic, political, and psychological benefits. Preeminent states may, therefore, overestimate the intensity and immediacy of threats, or to fundamentally redefine what constitutes an acceptable level of threat to live with. To protect itself from emerging or even future threats, preeminent states may be more likely to take unilateral action, particularly compared to when power is distributed more evenly in the international system. Preeminence has not only made it possible for the United States to overestimate its power, but also to overestimate the degree to which other states and societies see American power as legitimate and even as worthy of emulation. There is almost a belief in historical determinism, or the feeling that one was destined to stand atop world politics as a colossus, and this preeminence gives one a special prerogative for one’s role and purpose in world politics. The security doctrine that the George W. Bush administration adopted took an aggressive approach to maintaining American preeminence and eliminating threats to American security, including waging preventive war. The invasion of Iraq, based on claims that Saddam Hussein possessed weapons of mass destruction (WMD) and had ties to al Qaeda, both of which turned out to be false, produced huge costs for the United States---in political, material, and human terms. After seven years of war, tens of thousands of American military personnel remain in Iraq. Estimates of its long-term cost are in the trillions of dollars.15 At the same time, the United States has fought a parallel conflict in Afghanistan. While the Obama administration looks to dramatically reduce the American military presence in Iraq, President Obama has committed tens of thousands of additional U.S. troops to Afghanistan. Distraction. Preeminent states have a tendency to seek to shape world politics in fundamental ways, which can lead to conflicting priorities and unnecessary diversions. As resources, attention, and prestige are devoted to one issue or set of issues, others are necessarily disregarded or given reduced importance. There are always trade-offs and opportunity costs in international politics, even for a state as powerful as the United States. Most states are required to define their priorities in highly specific terms. Because the preeminent state has such a large stake in world politics, it feels the need to be vigilant against any changes that could impact its short-, medium-, or longterm interests. The result is taking on commitments on an expansive number of issues all over the globe. The United States has been very active in its ambition to shape the postCold War world. It has expanded NATO to Russia’s doorstep; waged war in Bosnia, Kosovo, Iraq, and Afghanistan; sought to export its own democratic principles and institutions around the world; assembled an international coalition against transnational terrorism; imposed sanctions on North Korea and Iran for their nuclear programs; undertaken ‘‘nation building’’ in Iraq and Afghanistan; announced plans for a missile defense system to be stationed in Poland and the Czech Republic; and, with the United Kingdom, led the response to the recent global financial and economic crisis. By being so involved in so many parts of the world, there often emerges ambiguity over priorities. The United States defines its interests and obligations in global terms, and defending all of them simultaneously is beyond the pale even for a superpower like the United States. Issues that may have received benign neglect during the Cold War, for example, when U.S. attention and resources were almost exclusively devoted to its strategic competition with the Soviet Union, are now viewed as central to U.S. interests. Bearing Disproportionate Costs of Maintaining the Status Quo. As the preeminent power, the United States has the largest stake in maintaining the status quo. The world the United States took the lead in creating---one based on open markets and free trade, democratic norms and institutions, private property rights and the rule of law---has created enormous benefits for the United States. This is true both in terms of reaching unprecedented levels of domestic prosperity and in institutionalizing U.S. preferences, norms, and values globally. But at the same time, this system has proven costly to maintain. Smaller, less powerful states have a strong incentive to free ride, meaning that preeminent states bear a disproportionate share of the costs of maintaining the basic rules and institutions that give world politics order, stability, and predictability. While this might be frustrating to U.S. policymakers, it is perfectly understandable. Other countries know that the United States will continue to provide these goods out of its own self-interest, so there is little incentive for these other states to contribute significant resources to help maintain these public goods.16 The U.S. Navy patrols the oceans keeping vital sea lanes open. During financial crises around the globe---such as in Asia in 1997-1998, Mexico in 1994, or the global financial and economic crisis that began in October 2008--- the U.S. Treasury rather than the IMF takes the lead in setting out and implementing a plan to stabilize global financial markets. The United States has spent massive amounts on defense in part to prevent great power war. The United States, therefore, provides an indisputable collective good---a world, particularly compared to past eras, that is marked by order, stability, and predictability. A number of countries---in Europe, the Middle East, and East Asia---continue to rely on the American security guarantee for their own security. Rather than devoting more resources to defense, they are able to finance generous social welfare programs. To maintain these commitments, the United States has accumulated staggering budget deficits and national debt. As the sole superpower, the United States bears an additional though different kind of weight. From the Israeli-Palestinian dispute to the India Pakistan rivalry over Kashmir, the United States is expected to assert leadership to bring these disagreements to a peaceful resolution. The United States puts its reputation on the line, and as years and decades pass without lasting settlements, U.S. prestige and influence is further eroded. The only way to get other states to contribute more to the provision of public goods is if the United States dramatically decreases its share. At the same time, the United States would have to give other states an expanded role and greater responsibility given the proportionate increase in paying for public goods. This is a political decision for the United States---maintain predominant control over the provision of collective goods or reduce its burden but lose influence in how these public goods are used. Creation of Feelings of Enmity and Anti-Americanism. It is not necessary that everyone admire the United States or accept its ideals, values, and goals. Indeed, such dramatic imbalances of power that characterize world politics today almost always produce in others feelings of mistrust, resentment, and outright hostility. At the same time, it is easier for the United States to realize its own goals and values when these are shared by others, and are viewed as legitimate and in the common interest. As a result of both its vast power but also some of the decisions it has made, particularly over the past eight years, feelings of resentment and hostility toward the United States have grown, and perceptions of the legitimacy of its role and place in the world have correspondingly declined. Multiple factors give rise toanti-American sentiment, and anti-Americanism takes different shapes and forms.17 It emerges partly as a response to the vast disparity in power the United States enjoys over other states. Taking satisfaction in themissteps and indiscretions of the imposing Gulliver is a natural reaction. In societies that globalization (which in many parts of the world is interpreted as equivalent to Americanization) has largely passed over, resentment and alienation are felt when comparing one’s own impoverished, ill-governed, unstable society with the wealth, stability, and influence enjoyed by the United States.18 Anti-Americanism also emerges as a consequence of specific American actions and certain values and principles to which the United States ascribes. Opinion polls showed that a dramatic rise in anti-American sentiment followed the perceived unilateral decision to invade Iraq (under pretences that failed to convince much of the rest of the world) and to depose Saddam Hussein and his government and replace itwith a governmentmuchmore friendly to the United States. To many, this appeared as an arrogant and completely unilateral decision by a single state to decide for itselfwhen---and under what conditions---military force could be used. A number of other policy decisions by not just the George W. Bush but also the Clinton and Obama administrations have provoked feelings of anti-American sentiment. However, it seemed that a large portion of theworld had a particular animus for GeorgeW. Bush and a number of policy decisions of his administration, from voiding the U.S. signature on the International Criminal Court (ICC), resisting a global climate change treaty, detainee abuse at Abu Ghraib in Iraq and at Guantanamo Bay in Cuba, and what many viewed as a simplistic worldview that declared a ‘‘war’’ on terrorism and the division of theworld between goodand evil.Withpopulations around theworld mobilized and politicized to a degree never before seen---let alone barely contemplated---such feelings of anti-American sentiment makes it more difficult for the United States to convince other governments that the U.S.’ own preferences and priorities are legitimate and worthy of emulation. Decreased Allied Dependence. It is counterintuitive to think that America’s unprecedented power decreases its allies’ dependence on it. During the Cold War, for example, America’s allies were highly dependent on the United States for their own security. The security relationship that the United States had with Western Europe and Japan allowed these societies to rebuild and reach a stunning level of economic prosperity in the decades following World War II. Now that the United States is the sole superpower and the threat posed by the Soviet Union no longer exists, these countries have charted more autonomous courses in foreign and security policy. A reversion to a bipolar or multipolar system could change that, making these allies more dependent on the United States for their security. Russia’s reemergence could unnerve America’s European allies, just as China’s continued ascent could provoke unease in Japan. Either possibility would disrupt the equilibrium in Europe and East Asia that the United States has cultivated over the past several decades. New geopolitical rivalries could serve to create incentives for America’s allies to reduce the disagreements they have with Washington and to reinforce their security relationships with the United States.

#### Wide-spread torture is inevitable and guts the aff

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

Beginning at least in 2002, the United States created and developed a policy instituting torture — what it calls “enhanced interrogation” — of its detainees in the “global war on terror”2 under the general framework of a state of necessity. Many of these torture techniques have already been used and refined by the Western powers during the 20th century.3 They are also built partially into U.S. “survival, evasion, resistance, escape” (sere) training program techniques, which reportedly also adapt techniques previously used by China.4 The logic of torture used as an information-seeking instrument in the current conflict, however, has entailed the creation of a large-scale institution of torture, spread among several countries, and implicating hundreds and perhaps thousands of people.5¶ This institution strikes at the heart of the very idea of human rights and core principles of liberal democratic society. It raises important and uncomfortable questions about the nature of human rights in the wake of the torture at Guantánamo and other sites, the policy and practice of extraordinary rendition, indefinite detentions and the suspension of due process and habeas corpus, the violation of domestic and international laws, and perhaps other features and goals of the program yet to come into the public light. The claim is a claim to exception or necessity to the suspension of laws and civil liberties in a moment of national emergency. This is not unusual, unfortunately. Most states have similar national emergency procedures, even if only implicit. The law will always be suspended in the name of survival and the global war on terror was framed as a matter of the survival of civilization. With self-defense being the moral justification of violence par excellence, extraordinary acts may be viewed as entirely legitimate in the defense of civilization. What should also concern us, however, is the suspension of rights in the name of political expediency. In other words, this is not only a moment for lawyers to rise to the occasion. The problem is political and philosophical. There is more at stake than the legally appropriate punishment of terrorists and credibility of certain public officials and agencies.¶ The prohibition of torture has been formal international law since the UN Declaration on Human Rights (1948) and the Geneva Conventions (1949). It is also generally assumed to be an international peremptory norm (jus cogens), a norm accepted universally by the international community that cannot be derogated, such as the norm of state sovereignty. The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984/1987) and the non-binding Istanbul Protocol (1999), among other international legal instruments, further codified the norm into international law. Torture violates international law, usually domestic law (as, for example, in the 8th Amendment to the United States constitution banning “cruel and unusual punishment”), basic morality, and one of the fundamental shared norms of international society. Violation of the law entails criminality by definition. Violation of a basic shared norm entails a loss of moral and political standing, of credibility, trust, and legitimacy in international society.

# 2NC

## K

### Impact Overview

#### Try or die — security makes extinction inevitable —

Extend Ahmed — the drive for security sanitizes destruction — causes accelerating global crises — only the alternative solves the root cause — environmental degradation, economic instability, prolif, terrorism, and inequality are all forced to fit within the security paradigm— this ensure militarized responses — we focus on the ways the military can contain crises instead of resolving their underlying causes

#### Ethical obligation to reject —

Security legitimizes genocide — the other is considered dangerous which legitimizes violence against difference.

#### Institutional reform ensures serial policy failure —

#### Reject try-or-die —

There is no stable status quo — the 1AC is not a neutral — it’s a political artifact made by filtering, interpreting, and editing in order to generate fear — solvency is a rigged game — they presuppose the necessity of the plan, and construct insecurity to justify it — if we win our epistemology arguments, you should their ideological blackmail.

### 2NC — Framework

#### Cast your ballot based on a holistic assessment of the 1AC as argument.

Solves Policy Analyses — status quo debate incentivizes hyperbolic impacts because the strategic cost of introducing throw-away scenarios is too low — the critique holds debaters accountable for the methodological grounding of their arguments — produces higher quality analysis.

#### Framework is a link —

It excludes security criticism because it doesn’t conform to standards of “policy relevance” — this is the same silencing of critical voices that allows security politics to continue uncontested — turns the case:

#### In the context of war powers, focus on procedural reforms ensures serial policy failure — only an epistemic break solves

Aziz Rana 12, Assistant Professor of Law, Cornell University Law School; A.B., Harvard College; J.D., Yale Law School; PhD., Harvard University, July 2012, “NATIONAL SECURITY: LEAD ARTICLE: Who Decides on Security?,” 44 Conn. L. Rev. 1417

Widespread concerns with the government's security infrastructure are by no means a new phenomenon. In fact, such voices are part of a sixty-year history of reform aimed at limiting state (particularly presidential) discretion and preventing likely abuses. n8 What is remarkable about these reform efforts is that in every generation critics articulate the same basic anxieties and present virtually identical procedural solutions. These procedural solutions focus on enhancing the institutional strength of both Congress and the courts to rein in the unitary executive. They either promote new statutory schemes that codify legislative responsibilities or call for greater court activism. As early as the 1940s, Clinton Rossiter argued that only a clearly established legal framework in which Congress enjoyed the power to declare and terminate states of emergency would prevent executive tyranny and rights violations in times of crisis. n9 After the Iran-Contra scandal, Harold Koh, now State Department Legal Adviser, once more raised this approach, calling for passage of a National Security Charter that explicitly enumerated the powers of both the executive and the legislature, promoting greater balance between the branches and explicit constraints on government action. n10 More recently, [\*1421] Bruce Ackerman has defended the need for an "emergency constitution" premised on congressional oversight and procedurally specified practices. n11 As for increased judicial vigilance, Arthur Schlesinger argued nearly forty years ago, in his seminal book, The Imperial Presidency, that the courts "had to reclaim their own dignity and meet their own responsibilities" by abandoning deference and by offering a meaningful check to the political branches. n12 Today, Laurence Tribe and Patrick Gudridge once more imagine that, by providing a powerful voice of dissent, the courts can play a critical role in balancing the branches. They write that adjudication can "generate[]-even if largely (or, at times, only) in eloquent and cogently reasoned dissent-an apt language for potent criticism." n13¶ The hope-returned to by constitutional scholars for decades-has been that by creating clear legal guidelines for security matters and by increasing the role of the legislative and judicial branches, government abuse can be stemmed. Yet despite this reformist belief, presidential and military prerogatives continue to expand even when the courts or Congress intervene. Indeed, the ultimate result primarily has been to entrench further the system of discretion and centralization. In the case of congressional legislation (from the 200 standby statutes on the books n14 to [\*1422] the post-September 11 and Iraq War Authorizations for the Use of Military Force, to the Detainee Treatment Act and the Military Commissions Acts n15 ), this has often entailed Congress self-consciously playing the role of junior partner- buttressing executive practices by providing its own constitutional imprimatur to them. Thus, rather than rolling back security practices, greater congressional involvement has tended to further strengthen and internalize emergency norms within the ordinary operation of politics. n16 As just one example, the USA PATRIOT Act, while no doubt controversial, has been renewed by Congress a remarkable ten consecutive times without any meaningful curtailments. n17 Such realities underscore the dominant drift of security arrangements, a drift unhindered by scholarly suggestions and reform initiatives. Indeed, if anything, today's scholarship finds itself mired in an argumentative loop, re-presenting inadequate remedies and seemingly incapable of recognizing past failures.¶ What explains both the persistent expansion of the federal government's security framework as well as the inability of civil libertarian solutions to curb this expansion? This Article argues that the current reform debate ignores the broader ideological context that shapes how the balance between liberty and security is struck. In particular, the very meaning of security has not remained static, but rather has changed dramatically since World War II and the beginning of the Cold War. This shift has principally concerned the basic question of who decides on issues of war and emergency. And as the following pages explore, at the center of this shift has been a transformation in legal and political judgments about the capacity of citizens to make informed and knowledgeable decisions in security domains. Yet, while underlying assumptions about popular knowledge-its strengths and limitations-have played a key role in shaping security practices in each era of American constitutional history, [\*1423] this role has not been explored in any sustained way in the scholarly literature.¶ As an initial effort to delineate the relationship between knowledge and security, this Article will argue that throughout most of the American experience, the dominant ideological perspective saw security as grounded in protecting citizens from threats to their property and physical well-being (especially those threats posed by external warfare and domestic insurrection). Drawing from a philosophical tradition extending back to John Locke, many politicians and thinkers-ranging from Alexander Hamilton and James Madison, at the founding, to Abraham Lincoln and Roger Taney-maintained that most citizens understood the forms of danger that imperiled their physical safety. n18 The average individual knew that securing collective life was in his or her own interest, and also knew the institutional arrangements and practices that would fulfill this paramount interest. n19 A widespread knowledge of security needs was presumed to be embedded in social experience, indicating that citizens had the skill to take part in democratic discussion regarding how best to protect property or to respond to forms of external violence. Thus the question of who decides was answered decisively in favor of the general public and those institutions-especially majoritarian legislatures and juries-most closely bound to the public's wishes. n20¶ What marks the present moment as distinct is an increasing repudiation of these assumptions about shared and general social knowledge. Today, the dominant approach to security presumes that conditions of modern complexity (marked by heightened bureaucracy, institutional specialization, global interdependence, and technological development) mean that while protection from external danger remains a paramount interest of ordinary citizens, these citizens rarely possess the capacity to pursue such objectives adequately. n21 Rather than viewing security as a matter open to popular understanding and collective assessment, in ways both small and large the prevailing concept sees threat as sociologically complex and as requiring elite modes of expertise. n22 Insulated decision-makers in the executive branch, armed with the specialized skills of the [\*1424] professional military, are assumed to be best equipped to make sense of complicated and often conflicting information about safety and self-defense. n23 The result is that the other branches-let alone the public at large-face a profound legitimacy deficit whenever they call for transparency or seek to challenge presidential discretion. Not surprisingly, the tendency of procedural reform efforts has been to place greater decision-making power in the other branches, and then to watch those branches delegate such power back to the very same executive bodies.

#### No offence —

It’s predictable — the critique must disprove the 1AC — they pick their representations — they should be able to defend them.

Solves topic education — methodology shapes policy so the critique is integral to understanding the topic.

Plan focus bad — reduces a 9 minute 1AC to a 10 second plan text — our framework ensures clash with aff content — solves depth of analysis.

#### Framework means the perm and alt solvency are irrelevant —

Our alt is the process of critiquing the 1AC — we don’t need to resolve global security to prove that the 1AC is methodologically bankrupt.

### 2NC — Perm

#### The perm is incoherent —

The alt isn’t an action — it’s the process of criticism that the 1NC and 2NC engage in — you cannot permute performative solvency.

#### Proves mutually exclusivity—

You cannot simultaneously affirm and criticize the plan.

#### Sequencing DA — ideological change must proceed institutional reform — otherwise security politics and institutional focus ensure that war powers authority remains centralized

Aziz Rana 12, Assistant Professor of Law, Cornell University Law School; A.B., Harvard College; J.D., Yale Law School; PhD., Harvard University, July 2012, “NATIONAL SECURITY: LEAD ARTICLE: Who Decides on Security?,” 44 Conn. L. Rev. 1417

If the objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this meahn for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars-emphasizing new statutory frameworks or greater judicial assertiveness-is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants-danger too complex for the average citizen to comprehend independently-it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that it remains unclear which popular base exists in society to raise these questions. Unless such a base fully emerges, we can expect our prevailing security arrangements to become ever more entrenched.

#### Cooption DA — the logic of the permutation is the logic of security — each security intervention can be justified by the excuse “only one more time” — the permutation’s rejection of security is inauthentic — one more signature strike, one more prisoner, one more intervention —that’s how security marginalizes all real alternatives

**Neocleous 8** [Mark Neocleous, Prof. of Government @ Brunel, *Critique of Security*, 185-6]

The only way out of such a dilemma, to escape the fetish, is perhaps to eschew the logic of security altogether – to reject it as so ideologically loaded in favour of the state that any real political thought other than the authoritarian and reactionary should be pressed to give it up. That is clearly something that can not be achieved within the limits of bourgeois thought and thus could never even begin to be imagined by the security intellectual. It is also something that the constant iteration of the refrain ‘this is an insecure world’ and reiteration of one fear, anxiety and insecurity after another will also make it hard to do. But it is something that the critique of security suggests we may have to consider if we want a political way out of the impasse of security. This impasse exists because security has now become so all-encom passing that it marginalises all else, most notably the constructive conﬂicts, debates and discussions that animate political life. The con stant prioritising of a mythical security as a political end – as the political end – constitutes a rejection of politics in any meaningful sense of the term. That is, as a mode of action in which differences can be articulated, in which the conﬂicts and struggles that arise from such differences can be fought for and negotiated, in which people might come to believe that another world is possible – that they might transform the world and in turn be transformed. Security politics simply removes this; worse, it removes it while purportedly addressing it. In so doing it suppresses all issues of power and turns political questions into debates about the most efﬁcient way to achieve ‘security’, despite the fact that we are never quite told – never could be told – what might count as having achieved it. Security politics is, in this sense, an anti-politics,141 dominating political discourse in much the same manner as the security state tries to dominate human beings, reinforcing security fetishism and the monopolistic character of security on the political imagination. We therefore need to get beyond security politics, not add yet more ‘sectors’ to it in a way that simply expands the scope of the state and legitimises state intervention in yet more and more areas of our lives. Simon Dalby reports a personal communication with Michael Williams, co-editor of the important text Critical Security Studies, in which the latter asks: if you take away security, what do you put in the hole that’s left behind? But I’m inclined to agree with Dalby: maybe there is no hole.142 The mistake has been to think that there is a hole and that this hole needs to be ﬁlled with a new vision or revision of security in which it is re-mapped or civilised or gendered or humanised or expanded or whatever. All of these ultimately remain within the statist political imaginary, and consequently end up re afﬁrming the state as the terrain of modern politics, the grounds of security. The real task is not to ﬁll the supposed hole with yet another vision of security, but to ﬁght for an alternative political language which takes us beyond the narrow horizon of bourgeois security and which therefore does not constantly throw us into the arms of the state. That’s the point of critical politics: to develop a new political language more adequate to the kind of society we want. Thus while much of what I have said here has been of a negative order, part of the tradition of critical theory is that the negative may be as signiﬁcant as the positive in setting thought on new paths. For if security really is the supreme concept of bourgeois society and the fundamental thematic of liberalism, then to keep harping on about insecurity and to keep demanding‘more security’ (while meekly hoping that this increased security doesn’t damage our liberty) is to **blind ourselves to the possibility of** building real alternatives **to the authoritarian tendencies in contemporary politics**. To situate ourselves against security politics would allow us to circumvent the debilitating effect achieved through the constant securitising of social and political issues, debilitating in the sense that ‘security’ helps consolidate the power of the existing forms of social domination and justiﬁes the short-circuiting of even the most democratic forms. It would also allow us to forge another kind of politics centred on a different con ception of the good. We need a new way of thinking and talking about social being and politics that moves us beyond security. This would perhaps be emancipatory in the true sense of the word. What this might mean, precisely, must be open to debate. But it certainly requires recognising that security is an illusion that has forgotten it is an illusion; it requires recognising that security is not the same as solidarity; it requires accepting that insecurity is part of the human condition, and thus giving up the search for the certainty of security and instead learning to tolerate the uncertainties, ambiguities and ‘insecurities’ that come with being human; it requires accepting that ‘securitizing’ an issue does not mean dealing with it politically, but bracketing it out and handing it to the state; it requires us to be brave enough to return the gift.143

#### Links are DAs to the perm —

They cannot sever their assumptions — makes the aff conditional — stable links are critical to neg ground and argument development.

### 2NC—Condo Good

#### Counter-interpretation—one conditional CP/one conditional critique.

Standards—

Argument Innovation—debaters are risk-averse—a fallback strategy encourages introduction of new positions—solves research skills.

Neg Flex—in-round testing is critical to balance aff prep.

Nuanced Advocacy—contradictory positions force aff defense of the political middle-ground through specific solvency deficits—prevents ideological extremism.

Strategic Thinking—causes introduction of the best arguments—necessitates intelligent coverage decisions—key to info processing and argument evaluation.

[If Dispo] Logic—a decision maker can always chose the status quo.

Substance crowd-out—re-appropriating time spent on condo solves fairness offense.

High Threshold—the 2AR is reactive and persuasive—theory has a 1-to-5 time trade-off—unless we make debate impossible, vote neg.

Defense—

Fairness impossible—resource and coaching differentials—no terminal impact—no one quits b/c of the process CP.

Skew inevitable—DAs and T

Contradictions inevitable—Security K and Deterrence DA

2NR collapse solves depth.

Cheating strategies lose to theory & competition args.

Judge is a referee—potential abuse isn’t a voter—blaming us for other teams behavior is unfair—voting down abuse solves their offence.

### 2NC — Expertise Link

#### The 1AC uses expertism to justify their security paranoia —

Expertise is ideological — those trained in dominant modes of thought are considered security experts — US security scholars saying that US primacy is stabilizing ensures bias.

This institutionalizes judicial and congressional deference which turns case. We assume the military should make the calls because they are “security experts.”

Causes global militarism — security experts use complexity to excuse them from scrutiny — they use globalization and technological development to — this means their data is biased because its interpreted through a securitized lens.

### Terror---Epist

#### Their terrorism advantage is epistemologically suspect---the ballot is crucial to reject state-sponsored knowledge that legitimizes global violence

Raphael 9—IR, Kingston University (Sam, Critical terrorism studies, ed. Richard Jackson, 49-51) ellipses in orig.

Over the past thirty years, a small but politically-significant academic field of ‘terrorism studies’ has emerged from the relatively disparate research efforts of the 1960s and 1970s, and consolidated its position as a viable subset of ‘security studies’ (Reid, 1993: 22; Laqueur, 2003: 141). Despite continuing concerns that the concept of ‘terrorism’, as nothing more than a specific socio-political phenomenon, is not substantial enough to warrant an entire field of study (see Horgan and Boyle, 2008), it is nevertheless possible to identify a core set of scholars writing on the subject who together constitute an ‘epistemic community’ (Haas, 1992: 2–3). That is, there exists a ‘network of knowledge-based experts’ who have ‘recognised expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain’. This community, or ‘network of productive authors’, has operated by establishing research agendas, recruiting new members, securing funding opportunities, sponsoring conferences, maintaining informal contacts, and linking separate research groups (Reid, 1993, 1997). Regardless of the largely academic debate over whether the study of terrorism should constitute an independent field, the existence of a clearly-identifiable research community (with particular individuals at its core) is a social fact.2¶ Further, this community has traditionally had significant influence when it comes to the formulation of government policy, particularly in the United States. It is not the case that the academic field of terrorism studies operates solely in the ivory towers of higher education; as noted in previous studies (Schmid and Jongman, 1988: 180; Burnett and Whyte, 2005), it is a community which has intricate and multifaceted links with the structures and agents of state power, most obviously in Washington. Thus, many recognised terrorism experts have either had prior employment with, or major research contracts from, the Pentagon, the Central Intelligence Agency, the State Department, and other key US Government agencies (Herman and O’Sullivan, 1989: 142–190; RAND, 2004). Likewise, a high proportion of ‘core experts’ in the field (see below) have been called over the past thirty years to testify in front of Congress on the subject of terrorism (Raphael, forthcoming). Either way, these scholars have fed their ‘knowledge’ straight into the policymaking process in the US.3¶ The close relationship between the academic field of terrorism studies and the US state means that it is critically important to analyse the research output from key experts within the community. This is particularly the case because of the aura of objectivity surrounding the terrorism ‘knowledge’ generated by academic experts. Running throughout the core literature is a positivist assumption, explicitly stated or otherwise, that the research conducted is apolitical and objective (see for example, Hoffman, 1992: 27; Wilkinson, 2003). There is little to no reflexivity on behalf of the scholars, who see themselves as wholly dissociated from the politics surrounding the subject of terrorism. This reification of academic knowledge about terrorism is reinforced by those in positions of power in the US who tend to distinguish the experts from other kinds of overtly political actors. For example, academics are introduced to Congressional hearings in a manner which privileges their nonpartisan input:¶ Good morning. The Special Oversight Panel on Terrorism meets in open session to receive testimony and discuss the present and future course of terrorism in the Middle East. . . . It has been the Terrorism Panel’s practice, in the interests of objectivity and gathering all the facts, to pair classified briefings and open briefings. . . . This way we garner the best that the classified world of intelligence has to offer and the best from independent scholars working in universities, think tanks, and other institutions . . .¶ (Saxton, 2000, emphasis added)¶ The representation of terrorism expertise as ‘independent’ and as providing ‘objectivity’ and ‘facts’ has significance for its contribution to the policymaking process in the US. This is particularly the case given that, as we will see, core experts tend to insulate the broad direction of US policy from critique. Indeed, as Alexander George noted, it is precisely because ‘they are trained to clothe their work in the trappings of objectivity, independence and scholarship’ that expert research is ‘particularly effective in securing influence and respect for’ the claims made by US policymakers (George, 1991b: 77).¶ Given this, it becomes vital to subject the content of terrorism studies to close scrutiny. Based upon a wider, systematic study of the research output of key figures within the field (Raphael, forthcoming), and building upon previous critiques of terrorism expertise (see Chomsky and Herman, 1979; Herman, 1982; Herman and O’Sullivan, 1989; Chomsky, 1991; George, 1991b; Jackson, 2007g), this chapter aims to provide a critical analysis of some of the major claims made by these experts and to reveal the ideological functions served by much of the research. Rather than doing so across the board, this chapter focuses on research on the subject of terrorism from the global South which is seen to challenge US interests. Examining this aspect of research is important, given that the ‘threat’ from this form of terrorism has led the US and its allies to intervene throughout the South on behalf of their national security, with profound consequences for the human security of people in the region.¶ Specifically, this chapter examines two major problematic features which characterise much of the field’s research. First, in the context of anti-US terrorism in the South, many important claims made by key terrorism experts simply replicate official US government analyses. This replication is facilitated primarily through a sustained and uncritical reliance on selective US government sources, combined with the frequent use of unsubstantiated assertion. This is significant, not least because official analyses have often been revealed as presenting a politically-motivated account of the subject. Second, and partially as a result of this mirroring of government claims, the field tends to insulate from critique those ‘counterterrorism’ policies justified as a response to the terrorist threat. In particular, the experts overwhelmingly ‘silence’ the way terrorism is itself often used as a central strategy within US-led counterterrorist interventions in the South. That is, ‘counterterrorism’ campaigns executed or supported by Washington often deploy terrorism as a mode of controlling violence (Crelinsten, 2002: 83; Stohl, 2006: 18–19).¶ These two features of the literature are hugely significant. Overall, the core figures in terrorism studies have, wittingly or otherwise, produced a body of work plagued by substantive problems which together shatter the illusion of ‘objectivity’. Moreover, the research output can be seen to serve a very particular ideological function for US foreign policy. Across the past thirty years, it has largely served the interests of US state power, primarily through legitimising an extensive set of coercive interventions in the global South undertaken under the rubric of various ‘war(s) on terror’. After setting out the method by which key experts within the field have been identified, this chapter will outline the two main problematic features which characterise much of the research output by these scholars. It will then discuss the function that this research serves for the US state.

## Exec CP

### Overview

Two planks

—ends indefinite detention

—statement — solves international perception

INTERNAL LINK to case are all based on the ending of indefinite detention

Supreme Court aff w/o a courts key warrant

Sufficiency

### 2NC Theory---Short

#### Executive fiat’s good:

1. **Competition determines legitimacy---if the CP is an opportunity cost to the plan than any model of debate that eliminates it is arbitrary and self-serving for the aff.**

#### Neg ground and limits --- the topic is huge and constantly shifting --- the Exec CP is the neg’s only stable advocacy --- without it our research burden becomes unmanageable because there would be thousands of small affs that ban individual actions of the executive.

#### Education --- comparisons between internal and external constraint are THE core controversy of War Powers --- ensures the aff should be able to generate offensive --- our solvency advocates proves

#### No offense --- they only need one reason why Congress or the Courts acting is key --- infinite aff prep proves this is reasonable --- don’t reward their lazy research practices

#### Not a voting issue --- reject the argument not the team

#### AT: Object Fiat

#### It’s not object fiat --- “war powers” are the object of the resolution, NOT the executive which is the subject because it’s part of the USFG --- proves it’s a legitimate actor to fiat. Our fiat is no more abusive than the aff’s --- we institute restrictive mechanisms just like they do.

#### The counterplan is a logical policy choice grounded in topic lit

Sinnar 13 assistant professor of law at Stanford Law School, May 2013

(Shirin, “Protecting Rights from Within? Inspectors General and National Security Oversight,” 65 Stan. L. Rev. 1027, Lexis)

More than a decade after September 11, 2001, the debate over which institutions of government are best suited to resolve competing liberty and national security concerns continues unabated. While the Bush Administration's unilateralism in detaining suspected terrorists and authorizing secret surveillance initially raised separation of powers concerns, the Obama Administration's aggressive use of drone strikes to target suspected terrorists, with little oversight, demonstrates how salient these questions remain. Congress frequently lacks the [\*1029] information or incentive to oversee executive national security actions that implicate individual rights. Meanwhile, courts often decline to review counterterrorism practices challenged as violations of constitutional rights out of concern for state secrets or institutional competence. n1 These limitations on traditional external checks on the executive - Congress and the courts - have led to increased academic interest in potential checks within the executive branch. Many legal scholars have argued that executive branch institutions supply, or ought to supply, an alternative constraint on executive national security power. Some argue that these institutions have comparative advantages over courts or Congress in addressing rights concerns; others characterize them as a second-best option necessitated by congressional enfeeblement and judicial abdication.

### 2NC Solves Terror

RT News — Guantanimo/Abu Grab — observable human rights abuses

Hathoway — resentment to existence of ID

Postal — existence of bases = recruitment tool

### 2NC Solves Cred

Lobel

Practice of ID hurts cred

#### The counterplan solves perception—

It’s politically costly to break commitments and aggressive presidents don’t make them at all—that means the counterplan sends a signal of self-binding—that’s Vermeule

#### Second Plank Solves Cred

Extend Kalb — presidential commitment is the golden standard in foreign policy — other countries trust Obama’s statements

#### CP is goldilocks---it solves credibility but balances it with presidential flex which the aff destroys

Adrian Vermeule 7, Harvard law prof - AND - Eric Posner - U Chicago law, The Credible Executive, 74 U. Chi. L. Rev. 865

With discretion comes distrust.2 Voters and legislators grant the executive discretion, through action or inaction, and increase execu- tive discretion during emergencies, because they believe that the benefits of doing so outweigh the risks of executive abuse.3 By the same token, political actors will attempt to constrain the executive, or will simply fail to grant powers they otherwise would have preferred to grant, where they believe that the risks and harms of abuses out- weigh any benefits in security or other goods. The fear of executive abuse arises from many sources, but the basic problem is uncertainty about the executive’s motivations. The executive may, for example, be a power maximizer, intent on using legal or factual discretion to harm political opponents and cement his political position, or that of his political party; or he may be an empire builder, interested in expand- ing his turf at the expense of other institutions.

Where the executive is indeed ill motivated in any of these ways, constraining his discretion (more than the voters would otherwise choose) may be sensible. But the executive may not be ill motivated at all. Where the executive is in fact a faithful agent, using his increased discretion to promote the public good according to whatever concep- tion of the public good voters hold, then constraints on executive dis- cretion are all cost and no benefit. Voters, legislators, and judges know that different executive officials have different motivations. Not all presidents are power maximizers or empire builders.4 Of course, the executive need not be pure of heart; his devotion to the public interest may in turn be based on concern for the judgment of history. But so long as that motivation makes him a faithful agent of the principal(s), he counts as well motivated.

The problem, however, is that the public has no simple way to know which type of executive it is dealing with. An ill-motivated ex- ecutive will just mimic the statements of a well-motivated one, saying the right things and offering plausible rationales for policies that out- siders, lacking crucial information, find difficult to evaluate—policies that turn out not to be in the public interest. The ability of the ill- motivated executive to mimic the public-spirited executive’s state- ments gives rise to the executive’s dilemma of credibility: the well- motivated executive has no simple way to identify himself as such. Distrust causes voters (and the legislators they elect) to withhold discretion that they would like to grant and that the well-motivated ex- ecutive would like to receive. Of course, the ill-motivated executive might also want discretion. The problem is that voters who would want to give discretion (only) to the well-motivated executive may choose not to do so, because they are not sure what type he actually is. The risk that the public and legislators will fail to trust a well-motivated president is just as serious as the risk that they will trust an ill-motivated president, yet legal scholars have felled forests on the second topic while largely neglecting the first.5

Our aim in this Article is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it. We focus on emergencies and national security but cast the analysis within a broader framework. Our basic claim is that the credibility dilemma can be addressed by executive signaling. Without any new constitutional amendments, statutes, or legislative action, law and executive practice already contain resources to allow a well- motivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying policies to institutional mechanisms that impose heavier costs on ill- motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade vot- ers that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.

The discussion is structured as follows. Part I lays out examples of the credibility dilemma, both historical and recent. Part II analyzes the credibility dilemma through the lens of principal-agent theory. Part III examines the attempted Madisonian solution to the credibility di- lemma and explains why it is a failure, for the most part. Part IV sug- gests a series of mechanisms for credibly demonstrating the executive’s good intentions. These mechanisms include independent commissions within the executive branch; bipartisanship in appointments to the executive branch, or more broadly the creation of domestic coa- litions of the willing; the related tactic of counterpartisanship, or choosing policies that run against the preferences of the president’s own party; commitments to multilateral action in foreign policy; increasing the transparency of the executive’s decisionmaking processes; and a regime of strict liability for executive abuses. Not all of these mecha- nisms succeed, and some of them succeed under some conditions but fail under others.

Credibility is but one good that trades off against other goods, even from the standpoint of the well-motivated executive. The main cost of credibility is that it diminishes the president’s control over policymaking. In Part IV, we attempt to identify the conditions under which one or the other mechanism can produce credibility benefits greater than the resulting costs.

### 1NC/2NC Alt Causes

#### Incremental shifts make the US look hypocritical—kills credibility

Roth 2k (Kenneth, Executive Director, Human Rights Watch, Fall, Chicago Journal of International Law,1 Chi. J. Int'l L. 347)

Washington's cynical attitude toward international human rights law has begun to weakenthe US government's voiceas an advocate for human rights around the  [\*353] world. Increasingly at UN human rights gatherings, other governments privately criticize Washington's "a la carte" approach to human rights. They see this approach reflected not only in the US government's narrow formula for ratifying human rights treaties but also in its refusal to join the recent treaty banning anti-personnel landmines and its opposition to the treaty establishing the International Criminal Court unless a mechanism can be found to exempt US citizens. For example, at the March-April 2000 session of the UN Commission on Human Rights, many governments privately cited Washington's inconsistent interest in international human rights standards to explain their lukewarm response to a US-sponsored resolution criticizing China's deteriorating human rights record.

### 1NC/2NC HR Inev

#### Human Rights inev — Economic development and democracy promotion solve

Francis Fukuyama ‘08the director of the International Development Program at Johns Hopkins AND Michael McFaul is a Hoover Senior Fellow and director of the Center on Democracy, Development, and Rule of Law, Winter 2007/2008 , The Washington Quarterly, “Should Democracy Be Promoted or Demoted?”

Moreover, **human rights and the democratic institutions that spring from them are inherently universal.** In keeping with the case made by Tocqueville in Democracy in America, **the historical arc toward universal human equality has been spreading providentially for the past 800 years. It has now encompassed not just the Western**, culturally Christian **world, but has spread and taken root in many other parts of the world as well, such as in India, Japan, Korea, and South Africa**. This suggests that **democracy has spread not as a manifestation of a particu- lar civilization’s cultural preferences, but because it serves universal needs or performs functions that are universally necessary, particularly at higher levels of economic development.** For example, the procedural rules of liberal democ- racy arguably guarantee that governments behave in a transparent, law-gov- erned way and remain accountable to the people they serve. **Even if a culture does not put a value on individual rights per se, liberal democracy is ultimately required for good governance and economic growth**

## Legit

### Brooks

1AC author

Emeprical consensus of studies

internal link isn’t right to impact

### 2NC---PRISM

#### PRISM caused huge and long lasting backlash

Hudgins 7/17 (Sarabrynn, Internet Freedom and Human Rights Program Associate at the New America Foundation's Open Technology Institute, “US Surveillance Unsettles Civilians More Than States,” 2013, http://www.huffingtonpost.com/sarabrynn-hudgins/us-surveillance-unsettles\_b\_3610941.html)

Allegations of American decline persist despite the United States' command of the world's largest economy and strongest military. It is in global esteem that the US is lagging, and where the international implications of US mass surveillance could do long-lasting harm.¶ Revelations about the National Security Agency's (NSA) surveillance programs have drawn enormous attention and opprobrium. US officials are fielding questions while Congress members draft legislation and civil rights groups file lawsuits. But these apparatuses have largely failed to address how US surveillance efforts affect non-Americans.¶ In a wired world where the US tells other countries that "full respect for human rights must be maintained" online, the privacy of US citizens and non-Americans alike must be part of the conversation. Hawks too should be concerned, for the soft power hits that come with serious international anger will only hamper US security and foreign policy. That is why the frustrations of everyday citizens around the world - not their governments - are more problematic for the US.¶ Governments React...Rather Weakly¶ French President Hollande insisted that NSA surveillance programs "stop immediately" and demanded a US explanation, while German Chancellor Angela Merkel stated her intention to question Obama on the "possible impairment of German citizens." Media speculates that European ire may inspire the European Parliament (EP) to veto the passage of the wide-ranging Trans-Atlantic Trade Deal. The Parliament did, after all, term the surveillance programs a "serious violation" and call for an investigation whose findings could threaten transatlantic cooperation.¶ These fears are overblown. Any recommendations to come from the EP will require passage not only by Parliamentarians, but also EU member states, before becoming law, in a labyrinthine process that is unlikely to occur. Also far-fetched is the notion that EU states will make a principled stand against the trade deal to their own financial detriment, or that they would suspend collaboration on security measures like the Terrorist Finance Tracking Programme.¶ Brazil, whose President called US surveillance of the Brazilian military an affront to Brazilian sovereignty and human rights, may pose the most serious state challenge to US surveillance.¶ Yet, considering that the NSA's PRISM program had 117,675 active foreign surveillance targets by April 2013, these reactions are rather tame.¶ State indignation (especially in Europe) may be muted, as some allege, because most web-savvy countries, including France, Great Britain, and the Netherlands, conduct their own sweeping surveillance programs. These black pots are loathe to disparage the US kettle, no matter how dark. The German government's outcry, the loudest in Europe, has been derided as largely "a flurry of activity apparently designed to reassure German electors." Le Monde ascribes France's "weak signs of protest" to "two excellent reasons: Paris already knew. And it does the same thing."¶ The song and dance of recrimination will continue mainly because governments want to appease "public pressure to respond assertively." US officials understand that they need not worry about real intergovernmental hostilities, at least for now.¶ The Civilian Storm¶ Foreign governments know that their constituents, on the other hand, are furious. Individuals around the world accuse the US government and US-based businesses like Google and Apple of far-reaching surveillance that inexcusably subsumes non-US citizens under US law. These people, and the groups through which they organize, point to the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights to demand freedom of expression and the right to privacy.¶ In comparison to heads of state, however, they lack the power levers necessary to demand US attention and a sincere response. Swiss civil rights groups have filed a criminal complaint saying that US surveillance violates local law, but such arguments will fall deaf in Washington, and the Swiss government has not taken up their mantle. Another European-based human rights group delivered a letter demanding data protections to the US Embassy, but a sympathetic US response will be rhetorical at best.¶ 96 international activists and organizations wrote an open letter to the United Nations Human Rights Council demanding that it ask states to "report on practices and laws in place on surveillance and what corrective steps will they will take to meet human rights standards." A similar letter addressed to the US Congress then asked the US "to take immediate action to dismantle existing, and prevent the creation of future, global Internet and telecommunications based surveillance systems." The expression of "serious alarm" by the 372 individuals and non-profits from 53 countries that signed the latter letter likely represents millions or billions more around the world who are outraged even if their governments will not make strong public stands against the US.¶ Speak Now, or Forever Hold Your Peace¶ Sorting out the extent of NSA surveillance efforts and how those programs affect everyday users will take time. As lawmakers and public officials debate programs like PRISM, it is all of us, American and otherwise, who should be concerned about their implications for privacy and freedom of expression. The preservation of human rights online cannot be contained by national borders.¶ While governments continue to wink at one another over stoic speeches, individuals around the world are authentically angry. If allowed to foment unabated, public pressure could yet back governments into punishing the US-- whether through trade breaks, diplomatic downgrade, or disengagement from US technology firms-- despite their current reticence to do so. Such moves will ensure that it is not just the right to privacy, but also American standing, that suffers. If for that reason alone, American officials should engage the international community, and not just their governmental counterparts, sooner rather than later.

#### PRISM created a crisis of confidence---Russia is usurping US soft power

Van Herpen 7/19 (Marcel H., director of the Cicero Foundation, a pro-EU think tank. “The PRISM Scandal, the Kremlin, and the Eurasian Union,” 2013, http://www.atlantic-community.org/-/the-prism-scandal-the-kremlin-and-the-eurasian-union)

The PRISM scandal should serve as a wake-up call for Europe and the US to pay attention to the new geopolitical fault lines in Europe, as the scandal has diminished US soft power, deepened the crisis of confidence between the EU and US, and offered Putin a new opportunity. Putin is poised to launch his project of a Eurasian Union, which would seek to expand Russian influence into the "weak Orthodox underbelly" of Europe and directly compete with the EU.¶ The PRISM scandal was an unexpected, but welcomed present for Russian President Vladimir Putin, for four reasons:¶ The scandal caused a decline in American soft power. After the presidency of George W. Bush, Barack Obama incarnated the promise of a new, value-oriented America, a promise for which he received – rather prematurely – the Nobel Peace Prize. Five years later, the PRISM affair has dealt a heavy blow to Obama's – and America's – reputation, which was already dented by the unresolved question of the Guantanamo detainees and Obama's secret drone war.¶ The PRISM scandal had a negative effect on the transatlantic relationship. It differed in this respect from the Watergate scandal: in the latter case it was Americans, not Europeans, who were the victims of illegal spying activities. For Europeans the news that the US was tapping telephones, bugging buildings, and hacking computers – not of its traditional "usual suspects," but of its European friends and allies – came as a bad surprise.¶ This scandal came on top of an already existing transatlantic estrangement which runs far deeper than a momentary dip that could easily be repaired. It is a symptom of a crisis of confidence between the transatlantic partners, which finds an expression in US criticism of Europe's low defense expenditures, and in European fears that Obama's "Asian pivot" means that the US is turning its attention away from Europe.¶ Not to be neglected is the fact that the scandal has opened an unexpected window of opportunity for Mr. Putin. Not only has the affair offered him a unique chance to pose as a principled defender of privacy and free information, but the transatlantic estrangement will help him realize his pet project: the establishment of a "Eurasian Union."¶ This project, presented by him in an Izvestia article in November 2011, is the most important geostrategic project Russia has been engaged in since the demise of the Soviet Union. It would expand the existing Customs Union of Russia, Belarus, and Kazakhstan, further into the former Soviet space. On the surface it looks like an innocent copy of the European Union, however, it is infact a neo-imperial project with one overriding goal: to bring Ukraine definitively back into the Russian orbit. Its final objectives are even more ambitious, as according to Igor Panarin, former Dean of the Russian Diplomatic Academy, the Eurasian Union should have four capitals: St. Petersburg, Almaty, Kiev, and Belgrade. In addition to Ukraine, Serbia, Montenegro, and Moldova are also designated by him as future members. The Eurasian Union is, therefore, in direct competition with the EU.¶ This ambitious project seeks to expand Russian influence into the "weak Orthodox underbelly" of Europe. Fitting into this scheme are the recent Russian overtures made to Cyprus with the aim of opening a naval base on the island – which would compensate for the eventual loss of the Russian naval facility in the Syrian port of Tartus.¶ At a moment in which a heavily rearming Russia plays a "Great Game" in the former Soviet space, the European Union is in a dire state. Inward-looking and in a never-ending crisis, the EU looks like a rudderless ship, with the French lacking clear ideas, the British menacing to leave the boat, and the Germans attacked everywhere for their supposed arrogance. The EU, wrongly considered a space in which a Kantian "eternal peace" has been realized, rather finds itself increasingly on the fault line of a new East-West competition.¶ The PRISM scandal, which diminishes US soft power, deepens the crisis of confidence between Europeans and Americans, and offers Mr. Putin new opportunities, is therefore an unwelcomed surprise, for some involved. Europeans and Americans should sit around the table – not only to build a free trade area, but also to face the new geopolitical challenges in Europe.

#### PRISM kills soft power---hypocrisy

Arkedis 13 (Jim, a Senior Fellow at the Progressive Policy Institute and was a DOD counter-terrorism analyst, “PRISM Is Bad for American Soft Power,” 6/19, <http://www.theatlantic.com/international/archive/2013/06/prism-is-bad-for-american-soft-power/277015/>) \*allies

The lack of public debate, shifting attitudes towards civil liberties, insufficient disclosure, and a decreasing terrorist threat demands that collecting Americans' phone and Internet records must meet the absolute highest bar of public consent. It's a test the Obama administration is failing.¶ This brings us back to Harry Truman and Jim Crow. Even though PRISM is technically legal, the lack of recent public debate and support for aggressive domestic collection is hurting America's soft power.¶ The evidence is rolling in. The China Daily, an English-language mouthpiece for the Communist Party, is having a field day, pointing out America's hypocrisy as the Soviet Union did with Jim Crow. Chinese dissident artist Ai Wei Wei made the link explicitly, saying "In the Soviet Union before, in China today, and even in the U.S., officials always think what they do is necessary... but the lesson that people should learn from history is the need to limit state power."¶ Even America's allies are uneasy, at best. German Chancellor Angela Merkel grew up in the East German police state and expressed diplomatic "surprise" at the NSA's activities. She vowed to raise the issue with Obama at this week's G8 meetings. The Italian data protection commissioner said the program would "not be legal" in his country. British Foreign Minister William Hague came under fire in Parliament for his government's participation.¶ If Americans supported these programs, our adversaries and allies would have no argument. As it is, the next time the United States asks others for help in tracking terrorists, it's more likely than not that they will question Washington's motives.

# 1NR

### Clean up

#### Soft power not key to heg and fails without hard power

Jervis 9---chaired prof of IR at Columbia. PhD (Robert, Unipolarity; A Structural Perspective, World Politics 61;1 Jan 2009)

It is even more difficult to measure and generalize about other forms of capability, often summarized under the heading “soft power.”5 It [End Page 191] seems likely, however, that the distribution of most forms of soft power will roughly correlate with the distribution of economic and military resources. Soft power matters but by itself cannot establish or alter the international hierarchy. Some small countries are widely admired (for example, Canada), but it is unclear whether this redounds to their benefit in some way or helps spread their values. Although states that lose economic and military strength often like to think that they can have a disproportionate role by virtue of their culture, traditions, and ideas, this rarely is the case. Intellectual and cultural strength can feed economic growth and perhaps bolster the confidence required for a state to play a leading role on the world stage, but material capabilities also tend to make the state’s ideas and culture attractive. This is not automatic, however. As I will discuss further below, economic and military power are not sufficient to reach some objectives, and a unipole whose values or behavior are unappealing will find its influence reduced.

### OVW

#### Emboldened rogue states threaten nuclear war --- crisis management is key to solve

Dibb 6 Emeritus Prof of IR @ Australian National University, Sydney Morning Herald (Australia), August 15, 2006 Tuesday, As one nuclear flashpoint reaches a lull, another simmers away, Pg. 11, Lexis

NOW that the building blocks for achieving a cessation in hostilities in the crisis involving Israel and Hezbollah in Lebanon are in place, the focus can shift back to the main game - Iran and North Korea. Both flashpoints have the potential to escalate out of control if they are not managed carefully. Yet neither region is noted for the success of its diplomacy. Both the Middle East and North-East Asia are heavily armed parts of the world characterised by deep-seated hatreds and long-standing territorial disputes. Historically, such situations have been a recipe for disaster. Not so long ago we were being told that we were living in a peaceful, interdependent world. Yet the fact is that the constraints and understandings of the bipolar Cold War world have been replaced by a more uncertain world, where there is much more jockeying for position and influence. In the Middle East, the destruction of Saddam Hussein's regime and its replacement, at least for now, by a weakened Iraq has allowed Iran to become the dominant regional power. The regime in Tehran is hell-bent on exporting terrorism and acquiring nuclear weapons. For Israel, the ceasefire may stall the military action, but the longer-term real strategic threat it faces - the spectre of a nuclear-armed Iran equipped with ballistic missiles of sufficient range and accuracy to target Israel without taking out Palestinian or neighbouring Arab territories - will not go away. Israel will not tolerate this and the US needs to make it clear to Tehran that any such attack on Israel will bring about Iran's destruction. That was a good enough understanding with the USSR at the height of the Cold War. But this discipline no longer applies because now there is only one superpower, which cannot control both Israel and Arab-Iranian protagonists. In North Korea a similar situation applies. Having seen the destruction of Saddam's regime, North Korea's Kim Jong-il is intent on acquiring nuclear weapons to preserve his regime. But the end of the Cold War has eroded the influence of North Korea's allies over its military ambitions and sense of security. China has been embarrassed by its inability to restrain North Korea from testing nuclear-capable ballistic missiles and Russia no longer wields any influence over the rogue state. In many ways, the situation in North-East Asia is potentially even more dire than in the Middle East. North Korea's recalcitrance in dismantling its nuclear weapons program comes at a time of unprecedented tensions between China and Japan and South Korea and Japan where one false move could spell disaster. North Korea is playing a dangerous game of bellicose brinkmanship; it continues to keep more than a million troops on high-alert status, including heavy artillery concentrations only 50 kilometres from Seoul, a city of more than 10 million people. North Korea's acquisition of nuclear weapons threatens to seriously destabilise North-East Asia and result in a nuclear arms race developing there. As it is, the North's belligerence is encouraging Japan to build up its military capabilities. This at a time when China's poor relations with Japan are worrying. The Chinese communist leadership drums up anti-Japanese nationalism whenever it suits, while China's military build-up greatly concerns Japan. The pace of Beijing's defence spending is puzzling, particularly as China faces no military threat for the first time in many decades. Similarly, Japan's relations with South Korea are at a low point, partly over Japan's view of the history of World War II but also because of territorial disputes, which Seoul has elevated to the level of national pride, threatening the use of military force. This is occurring when, from Tokyo's perspective, South Korea is drifting from the orbit of the US alliance and getting uncomfortably close to China, as well as appeasing North Korea. All this is an unhealthy mix of great power tensions and deep-seated historical distrust and growing military capabilities. The bigger worry is that Pyongyang's adventurism will incinerate any efforts to stabilise a region full of dangerous rivalries, as will the inevitable collision between Iran and Israel in the Middle East.

#### Rogue states multiply and cause extinction

Paul Johnson 13, Forbes contributor and Presidential Medal of Freedom winner, 2013 “A Lesson For Rogue States”, 5-8, <http://www.forbes.com/sites/currentevents/2013/05/08/a-lesson-for-rogue-states/>

Although we live in a violent world, where an internal conflict such as the Syrian civil war can cost 70,000 lives over a two-year period, there hasn’t been a major war between the great powers in 68 years. Today’s three superpowers–the U.S., Russia and China–have no conflicts of interest that can’t be resolved through compromise. All have hair-trigger nuclear alert systems, but the sheer scale of their armories has forced them to take nuclear conflict seriously. Thus, in a real sense, nuclear weapons have succeeded in abolishing the concept of a winnable war. The same cannot be said, however, for certain paranoid rogue states, namely North Korea and Iran. If these two nations appear to be prospering–that is, if their nuclear threats are winning them attention and respect, financial bribes in the form of aid and all the other goodies by which petty dictators count success–other prospective rogues will join them. One such state is Venezuela. Currently its oil wealth is largely wasted, but it is great enough to buy entree to a junior nuclear club. Another possibility is Pakistan, which already has a small nuclear capability and is teetering on the brink of chaos. Other potential rogues are one or two of the components that made up the former Soviet Union. All the more reason to ensure that North Korea and Iran are dramatically punished for traveling the nuclear path. But how? It’s of little use imposing further sanctions, as they chiefly fall on the long-suffering populations. Recent disclosures about life in North Korea reveal how effectively the ruling elite is protected from the physical consequences of its nuclear quest, enjoying high standards of living while the masses starve. Things aren’t much better in Iran. Both regimes are beyond the reach of civilized reasoning, one locked into a totalitarian vise of such comprehensiveness as to rule out revolt, the other victim of a religious despotism from which there currently seems no escape. Either country might take a fatal step of its own volition. Were North Korea to attack the South, it would draw down a retribution in conventional firepower from the heavily armed South and a possible nuclear response from the U.S., which would effectively terminate the regime. Iran has frequently threatened to destroy Israel and exterminate its people. Were it to attempt to carry out such a plan, the Israeli response would be so devastating that it would put an end to the theocracy forthwith. The balance of probabilities is that neither nation will embark on a deliberate war but instead will carry on blustering. This, however, doesn’t rule out war by accident–a small-scale nuclear conflict precipitated by the blunders of a totalitarian elite. Preventing Disaster The most effective, yet cold-blooded, way to teach these states the consequences of continuing their nuclear efforts would be to make an example of one by destroying its ruling class. The obvious candidate would be North Korea. Were we able to contrive circumstances in which this occurred, it’s probable that Iran, as well as any other prospective rogues, would abandon its nuclear aims. But how to do this? At the least there would need to be general agreement on such a course among Russia, China and the U.S. But China would view the replacement of its communist ally with a neutral, unified Korea as a serious loss. Compensation would be required. Still, it’s worth exploring. What we must avoid is a jittery world in which proliferating rogue states perpetually seek to become nuclear ones. The risk of an accidental conflict breaking out that would then drag in the major powers is too great. This is precisely how the 1914 Sarajevo assassination broadened into World War I. It is fortunate the major powers appear to have understood the dangers of nuclear conflict without having had to experience them. Now they must turn their minds, responsibly, to solving the menace of rogue states. At present all we have are the bellicose bellowing of the rogues and the well-meaning drift of the Great Powers–a formula for an eventual and monumental disaster that could be the end of us all.

#### Due process collapses intelligence gathering --- sources dry up --- destroys the heart of counter-terror policy

Delery Et.al. ’12 - Principal Deputy, Assistant Attorney General, Civil Division, DOJ

Principal Deputy, Assistant Attorney General, Civil Division, STUART F. DELERY

Defendants' Motion to Dismiss, United States' Statement of Interest, Case 1:12-cv-01192-RMC Document 18 Filed 12/14/12 Page 1 of 58, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, 12/14/2012

Third. Plaintiffs' claims raise the specter of disclosing classified intelligence information in open court. The D.C. Circuit has recognized that "the difficulties associated with subjecting allegations involving CIA operations and covert operatives to judicial and public scrutiny" are pertinent to the special factors analysis. Wilson, 535 F.3d at 710. In such suits, "'even a small chance that some court will order disclosure of a source's identity could well impair intelligence gathering and cause sources to close up like a clam."'1 Id. (quoting Tenet v. Doe, 544 U.S. 1,11 (2005)). And where litigation of a plaintiffs allegations "would inevitably require an inquiry into "classified information that may undermine ongoing covert operations,"\* special factors apply. Wilson, 535 F.3d at 710 (quoting Tenet, 544 U.S. at 11). See also Vance, 2012 WL 5416500 at "8 ("When the state-secrets privilege did not block the claim, a court would find it challenging to prevent the disclosure of secret information.11); Lebron, 670 F.3d at 554 (noting that the "chilling effects on intelligence sources of possible disclosures during civil litigation and the impact of such disclosures on military and diplomatic initiatives at the heart of counterterrorism policy1' are special factors); Arar, 585 F.3d at 576 (holding that the risk of disclosure of classified information is a special factor in the "extraordinary rendition" context).

#### Turns credibility

Coes 11 – Ben Coes, a former speechwriter in the George H.W. Bush administration, managed Mitt Romney’s successful campaign for Massachusetts Governor in 2002 & author, “The disease of a weak president”, The Daily Caller, http://dailycaller.com/2011/09/30/the-disease-of-a-weak-president/

The disease of a weak president usually begins with the Achilles’ heel all politicians are born with — the desire to be popular. It leads to pandering to different audiences, people and countries and creates a sloppy, incoherent set of policies. Ironically, it ultimately results in that very politician losing the trust and respect of friends and foes alike.¶ In the case of Israel, those of us who are strong supporters can at least take comfort in the knowledge that Tel Aviv will do whatever is necessary to protect itself from potential threats from its unfriendly neighbors. While it would be preferable for the Israelis to be able to count on the United States, in both word and deed, the fact is right now they stand alone. Obama and his foreign policy team have undercut the Israelis in a multitude of ways. Despite this, I wouldn’t bet against the soldiers of Shin Bet, Shayetet 13 and the Israeli Defense Forces.¶ But Obama’s weakness could — in other places — have implications far, far worse than anything that might ultimately occur in Israel. The triangular plot of land that connects Pakistan, India and China is held together with much more fragility and is built upon a truly foreboding foundation of religious hatreds, radicalism, resource envy and nuclear weapons.¶ If you can only worry about preventing one foreign policy disaster, worry about this one. Here are a few unsettling facts to think about:¶ First, Pakistan and India have fought three wars since the British de-colonized and left the region in 1947. All three wars occurred before the two countries had nuclear weapons. Both countries now possess hundreds of nuclear weapons, enough to wipe each other off the map many times over.¶ Second, Pakistan is 97% Muslim. It is a question of when — not if — Pakistan elects a radical Islamist in the mold of Ayatollah Khomeini as its president. Make no mistake, it will happen, and when it does the world will have a far greater concern than Ali Khamenei or Mahmoud Ahmadinejad and a single nuclear device.¶ Third, China sits at the northern border of both India and Pakistan. China is strategically aligned with Pakistan. Most concerning, China covets India’s natural resources. Over the years, it has slowly inched its way into the northern tier of India-controlled Kashmir Territory, appropriating land and resources and drawing little notice from the outside world.¶ In my book, Coup D’Etat, I consider this tinderbox of colliding forces in Pakistan, India and China as a thriller writer. But thriller writers have the luxury of solving problems by imagining solutions on the page. In my book, when Pakistan elects a radical Islamist who then starts a war with India and introduces nuclear weapons to the theater, America steps in and removes the Pakistani leader through a coup d’état.¶ I wish it was that simple.¶ The more complicated and difficult truth is that we, as Americans, must take sides. We must be willing to be unpopular in certain places. Most important, we must be ready and willing to threaten our military might on behalf of our allies. And our allies are Israel and India.¶ There are many threats out there — Islamic radicalism, Chinese technology espionage, global debt and half a dozen other things that smarter people than me are no doubt worrying about. But the single greatest threat to America is none of these. The single greatest threat facing America and our allies is a weak U.S. president. It doesn’t have to be this way. President Obama could — if he chose — develop a backbone and lead. Alternatively, America could elect a new president. It has to be one or the other. The status quo is simply not an option.

### UQ---AT: Hamdan Pounder

#### Hamdan has no long term impact --- not based on the Constitution

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While Hamdan is an important decision, it is doubtful that the Court’s opinion will have the long-term significance of a Youngstown Sheet & Tube Co. v. Sawyer 3 or United States v. Nixon . 4 Unlike Youngstown or Nixon , Hamdan largely avoided momentous questions of constitutional separation of powers. Rather, Justice Stevens’s opinion for the Court invalidating military commissions rested solely on the interpretation of three kinds of non-constitutional law: federal statutes relating to mili- tary justice, treaties relating to the treatment of military detain- ees, and the customary international laws of war. The non- constitutional basis for the Hamdan decision means that Congress may reinstate pre- Hamdan military commissions by simply passing a statute that more explicitly approves them.

#### Bush-era case precedent won’t last absent the plan’s explicit ruling

Craig Green 11, Professor of Law @ Temple, “Ending the Korematsu Era: A View from the Modern War on Terror Cases,” Oct 3, <http://legalworkshop.org/2011/10/03/ending-the-korematsu-era-a-view-from-the-modern-war-on-terror-cases>

The Bush Administration’s legal strategy after September 11 had three components, each of which would ultimately be considered by the Supreme Court. First, the President declared that the terrorist attacks of 2001 were not ordinary crimes, they were acts of “war.” Second, under theories of so-called “unitary executive” power, the President claimed that his wartime actions could not be constrained even by contrary federal legislation. Third, invoking Korematsu-era precedents, governmental lawyers argued that because Congress had implicitly authorized instances of executive detention and military commissions, the Supreme Court could not second-guess those activities. From 2004 to 2008, the Supreme Court issued a series of technical, narrowly drafted decisions concerning these issues. The Court largely accepted the President’s characterization of the early twenty-first century as wartime, it largely rejected the theory of unitary executive war power, and it very subtly and gradually rejected precedents from the Korematsu era. In contrast to Eisentrager, the Court in Rasul recognized federal courts’ jurisdiction to consider the legality of extraterritorial aliens’ detention at Guantanamo. Yet Rasul was decided purely on statutory grounds rather than constitutional ones, thus leaving formally open the Korematsu-Era’s question of what courts should do if Congress and the President act together. In contrast to Hirabayashi and Korematsu, the Court in Hamdi required the President to follow more rigorous procedures before detaining even one American citizen for military reasons. But Hamdi produced no majority opinion; various Justices divided on whether Congress had authorized executive detention at Guantanamo and also on whether the President should have leeway to detain enemy combatants indefinitely within the United States. In 2006, the Hamdan Court rejected Yamashita’s and Quirin’s conclusion that military commissions could apply government-friendly procedural rules with virtually no judicial oversight. But Hamdan again invoked only statutory limits on presidential action and thereby ostensibly avoided contradicting any policy that had been approved by both the President and Congress. In 2008, Boumediene crossed an important doctrinal line, as the Court used constitutional grounds to invalidate Congress’s and the President’s combined effort to deny habeas jurisdiction to Guantanamo detainees. When viewed alongside Boumediene’s twenty-first-century companions, however, the decision confirmed a deeper and broader doctrinal message. In a series of cases, on admittedly eclectic technical grounds, the twenty-first-century Court has repeatedly rejected Korematsu-era deference to claims of military necessity. As Bush Administration lawyers did not grasp, Korematsu was not the only flawed decision about war powers to emerge from World War II, and Korematsu-era arguments about high judicial deference could not be sanitized simply by citing cases that have racially neutral facts and less infamous names. III. Will The Korematsu Era Stay Overruled? The force of legal precedent is only partly a matter of analyzing judicial words and holdings; it is also a matter of culture, interpretation, and reinterpretation. What is it that makes iconic cases like Marbury and Brown conventional heroes, while other icons like Lochner and Korematsu are conventionally villains? The very complexity of any answer highlights the ongoing historical process of judicial decisionmaking. Judges, lawyers, professors, and ultimately law students (who refill those same ranks) are continually required to revisit both the meaning and the value of past precedents. I have suggested that there were significant consequences for the legal community in having forgotten the historical context of Korematsu and companionate decisions from its “era.” There are parallel risks that twenty-first-century precedents will be underappreciated. Wasn’t Rasul “only” a case about federal habeas statutes? Hamdi a case requiring “not-quite-zero” process to support executive detention? Hamdan an interpretation of the Uniform Code of Military Justice? And Boumediene “only” a decision about the Suspension Clause? One can predict with confidence that future executive branch lawyers may someday try to limit these precedents, thereby resurrecting whatever can be salvaged from the Korematsu era, and arguing once again that Korematsu is a terribly flawed precedent — but one whose singular error was limited “only” to racist wholesale detention. Nothing can stop this ongoing process of revision and retrenchment, and no one can predict which arguments will prevail in future crises that may involve different factual circumstances. What can be done is to bear witness to what has happened thus far, in the ongoing hope that such evidence might allow current and future lawyers and judges to be better prepared for future crises. For anyone who wishes to celebrate the Korematsu era’s end, the time to analyze the recent war-powers cases may be now. Otherwise, the Court’s subtle language and narrow holdings may allow future generations to deflect recent precedents and revive Korematsu-era principles that twenty-first-century judges have firmly, if quietly, laid to rest.

#### Courts are staying out of war powers allocation

Elsea et al. 13 Jennifer Elsea, Michael Garcia, and Thomas Nicola are legislative attorneys at the Congressional Research Service. “Congressional Authority to Limit Military Operations,” Feb 19, CRS, http://fpc.state.gov/documents/organization/206121.pdf

Jurisprudence suggests that courts would not necessarily view a repeal of prior authorization, by itself, as compelling the immediate withdrawal of U.S. forces. As an overarching matter, courts have been highly reluctant to act in cases involving national security, especially when they require a pronouncement as to the legality of a military conflict or the strategies used therein. 121 Many such cases have been dismissed without reaching the merits of the arguments at issue, including when they involve a political question that the judiciary considers itself ill-suited to answer. 122 Legal actions brought by Members of Congress challenging the lawfulness of military actions have had no greater success than suits brought by private citizens. 123 While the courts have suggested a willingness to intervene in disputes between the two branches that reach a legal (as opposed to political) impasse, they have yet to find an impasse on matters of war that has required judicial settlement. In other words, as long as Congress retains options for bringing about a military disengagement but has not exercised them, courts are unlikely to get involved.

#### Court deference is at an all-time high --- most recent cases prove

George D. Brown 11, Interim Dean and Robert F. Drinan, S.l., Professor of Law, Boston College Law School, 1/7/11, “Accountability, Liability, and the War on Terror -- Constitutional Tort Suits as Truth and Reconciliation Vehicles,” Florida Law Review, <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1337&context=lsfp>

Still, the notion of national security deference is deeply ingrained in our constitutional tradition. Its institutional foundations make sense, as ably demonstrated by Professor Pushaw.415 The question that arises is whether things have changed with the Court's decisions in a series of "enemy combatant" cases since the onset ofthe war on terror.416 These cases have arisen in the context of petitions for habeas corpus. The Court, as Professor Pushaw puts it, "interpreted the habeas corpus statute generously,'.417 even to the point of distortion.418 On the other hand, the substantive results represented a mixed bag of defects and victories for the President. "[T]hese three cases did not necessarily signal a major shift in the Court's jurisprudence in which individual liberties will be upheld vigorously against executive claims of national security.'.419 Professor Pushaw wrote these words before Boumediene v. Bush,420 in which the Court took on both political branches. Boumediene, far more than its immediate predecessors, might be seen as the case that broke the back of national security deference.421 The majority opinion emphasized the judiciary's Marburybased role as the branch that says "what the law is,' 22 echoing its earlier statement in Hamdi v. Rumsfeld that the Constitution "most assuredly envisions a role for all three branches when individual liberties are at stake. ,.424 ¶ On the other hand, it is possible to see Boumediene as resting primarily on the key role of habeas corpus. The Court proclaimed the writ's "centrality," noting that "protection for the privilege of habeas corpus was one of the few safeguards of liberty specified in a Constitution that, at the outset, had no Bill of Rights. ,.425 I have raised elsewhere the argument that one should not extrapolate too far from the habeas cases, even if they are viewed as an assertion of the judicial role.426 Habeas raises the fundamental question of the lawfulness of executive detention and often presents the judiciary with familiar issues of the validity of procedures. Reverse war on terror suits would take the courts much further. ¶ Certainly, the Court's two most recent war on terror decisions show a reluctance to go further and may even constitute a retrenchment. The importance of Ashcroft v. I{lbar27 has already been noted. Holder v. Humanitarian Law Project's points in the same direction. Holder upheld a criminal statute that is a crucial component of the war on terror.429 It did so in the face of a vigorous First Amendment challenge, supported by three Justices.43o Both cases show deference toward the government and appreciation of the difficulties of waging the war on terror. Iqbal noted that "the Nation's top law enforcement officers [were acting] in the aftermath of a devastating terrorist attack .... ,.431 Holder's language is even stronger. The Court stated explicitly that deference was appropriate because "[t]his litigation implicates sensitive and weighty interests of national security and foreign affairs.'.432 Indeed, the opinion went further endorsing the preventive approach to counterterrorism and recognizing the government's need to often act "based on informed judgment rather than concrete evidence.'.433 In perhaps the ultimate demonstration of the importance of rhetoric, the Court's opinion closed with a citation of the Preamble to the Constitution and its recognition of the need to provide '''for the common defence [sic].".434 Iqbal and Holder stand in stark contrast to the habeas decisions of a few years earlier.

### AT jud review good

#### DA turns liberty impacts --- failure in crisis causes worse intrusion

William Galston 8/22/13, senior fellow @ the Brookings Institute’s Governance Studies Program, “Politics & Ideas: How Much Transparency Do We Really Want?” WSJ, Factiva

Yet the relation between collective security and individual liberty is not zero-sum. Because another 9/11-scale terrorist event might well lead to even more intrusive antiterrorism measures, reducing the likelihood of such an event could end up preventing serious infringements on liberty. Up to a point, liberty and security can be mutually reinforcing. But at what point do they become opposed?

#### Court involvement kills the perception of resolve----it emboldens adversaries

John Yoo 6, Professor of Law, University of California at Berkeley School of Law, Courts At War, 91 Cornell L. Rev. 573

Article III itself also significantly limits the role of federal courts in performing certain functions. Once the President and Congress have enacted a statute or the President and Senate have made a treaty, the judiciary's constitutional responsibility is to execute those goals in the context of Article III cases or controversies, subject to any policymaking discretion implicitly given to the courts by Congress in areas [\*594] of statutory ambiguity or of federal common law. n117 Federal judges cannot alter or refuse to execute laws, even if the original circumstances that gave rise to the statute or treaty have changed. If a federal court, for example, finds that a defendant has violated the Helms-Burton Act by "trafficking" in property confiscated by the Cuban government, it is obligated to render judgment for an American plaintiff who once owned that property. n118 Article III requires a federal court to reach that decision even if the effects of the judgment in that particular case would harm the national interest. n119

Judicial decisions may harm the national interest because courts cannot control the timing of their proceedings or coordinate their judgments with the actions of the other branches of government. For example, the President might be engaged in a diplomatic campaign to pressure a Middle Eastern country into terminating its support for terrorism at the time that a judicial decision freed a suspected al Qaeda operative. A judicial decision along these lines could undermine the appearance of unified resolve on the part of the United States, or it might suggest to the Middle Eastern country that the executive branch cannot guarantee that it could follow through on its own counterterrorism policies. A court cannot take account of such naked policy considerations in deciding whether a federal statute has been violated or whether to grant relief, while the political branches can constantly modify policy in reaction to ongoing events. Even if the judiciary seeks guidance from the executive branch, such deference may undermine any appearance of judicial independence.

#### Key to winning all future conflicts

Karlton Johson 6, Army War College, “Temporal and Scalar Mechanics of Conflict Strategic Implications of Speed and Time on the American Way of War,” http://www.dtic.mil/dtic/tr/fulltext/u2/a449394.pdf

The U.S. Army War College uses the acronym “VUCA” to describe the volatile, uncertain, chaotic and ambiguous environment in which strategy is made.4 If the present is any indication of the future, then it is reasonable to assume that the world will become increasingly dangerous as long as that strategic environment exists. Many long-range assessments predict that global tensions will continue to rise as resources become even more constrained and as transnational threats endanger international security. 5 Future leaders and planners can expect to see weak and failed states persisting to dominate U.S. foreign policy agendas. Terrorism will remain a vital interest, and the use of American military strength will remain focused on the dissuasion, deterrence, and, where necessary, the preemption of strategic conflict. Enemies will work aggressively to offset U.S. military superiority by seeking out technologies that will offer some level of asymmetric advantage, and the challenging asymmetric nature of future conflicts will add deeper complexity to both war planning and the development of national security strategy. 6 The “National Defense Strategy of the United States,” published in March 2005, addressed the unconventional nature of the future. It argued that enemies are increasingly likely to pose asymmetric threats resulting in irregular, catastrophic and disruptive challenges.7 This means that, in some cases, non-state actors will choose to attack the United States using forms of irregular warfare that may include the use of weapons of mass destruction. These actors may also seek new and innovative ways to negate traditional U.S. strengths to their advantage.8 In fact, one author theorizes that “speed of light engagements” will be the norm by the year 2025, and America may lose its monopoly on technological advances as hostile nations close the gap between technological “haves” and “have nots.”9 This type of warfare lends itself to engagements of varying speed and temporal geometry. 10 Therefore, in conflicts of the future, time and speed will matter. Consequently, it is necessary to analyze these elements with rigor and discipline in order to understand their far-reaching implications.

#### Perception of weak Presidential crisis response collapses heg

John R. Bolton 9, Senior fellow at the American Enterprise Institute & Former U.S. ambassador to the United Nations, “The danger of Obama's dithering,” Los Angeles Times, October 18, http://articles.latimes.com/2009/oct/18/opinion/oe-bolton18

Weakness in American foreign policy in one region often invites challenges elsewhere, because our **adversaries carefully follow** diminished American resolve. Similarly, presidential indecisiveness**, whether because of uncertainty or** internal political struggles**, signals that the United States may not respond to international challenges in clear and coherent ways.** Taken together, **weakness and indecisiveness have proved historically to be a** toxic **combination for America's global interests.** That is exactly the combination we now see under President Obama. If anything, his receiving the Nobel Peace Prize only underlines the problem. All of Obama's campaign and inaugural talk about "extending an open hand" and "engagement," especially the multilateral variety, isn't exactly unfolding according to plan. Entirely predictably, we see more clearly every day that diplomacy is not a policy but only a technique. **Absent** presidential leadership, **which at a minimum means** clear policy direction and persistence in the face of criticism and adversity**, engagement simply embodies** weakness and indecision.

#### Crises inevitably cause rollback of the plan

Laura Young 13, Ph.D., Purdue University Associate Fellow, June 2013, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

A president looks for chances to increase his power (Moe and Howell 1999). Windows of opportunity provide those occasions. These openings create an environment where the president faces little backlash from Congress, the judicial branch, or even the public. Though institutional and behavioral conditions matter, domestic and international crises play a pivotal role in aiding a president who wishes to increase his power (Howell and Kriner 2008, 475). These events overcome the obstacles faced by the institutional make-up of government. They also allow a president lacking in skill and will or popular support the opportunity to shape the policy formation process. In short, focusing events increase presidential unilateral power.

#### Outweighs their mechanism

Laura Young 13, Ph.D., Purdue University Associate Fellow, June 2013, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

During periods of crisis, the time available to make decisions is limited. Because the decision-making process is often arduous and slow in the legislative branch, it is not uncommon for the executive branch to receive deference during a crisis because of its ability to make swift decisions. The White House centralizes policies during this time, and presidents seize these opportunities to expand their power to meet policy objectives. Importantly, presidents do so with limited opposition from the public or other branches of government (Howell and Kriner 2008). In fact, despite the opposition presidents often face when centralizing policies, research shows policies formulated via centralized processes during times of crisis receive more support from Congress and the American people (Rudalevige 2002, 148-49). For several reasons, a crisis allows a president to promote his agenda through unilateral action. First, a critical exogenous shock shifts attention and public opinion (Birkland 2004, 179). This shift is a phenomenon known as the “rally round the flag” effect (Mueller 1970). The rally effect occurs because of the public's increase in “its support of the president in times of crisis or during major international events” (Edwards and Swenson 1997, 201). Public support for the president rises because he is the leader and, therefore, the focal point of the country to whom the public can turn for solutions. Additionally, individuals are more willing to support the president unconditionally during such times, hoping a “united front” will increase the chance of success for the country (Edwards and Swenson 1997, 201). As a result, a crisis or focusing event induces an environment that shifts congressional focus, dispels gridlock and partisanship, and increases positive public opinion—each of which is an important determinant for successful expansion of presidential power (Canes-Wrone and Shotts 2004; Howell 2003). In other words, a crisis embodies key elements that the institutional literature deems important for presidential unilateral policy making. The president's ability to focus attention on a particular issue is also of extreme importance if he wishes to secure support for his agenda (Canes-Wrone and Shotts 2004; Edwards and Wood 1999; Howell 2003; Neustadt 1990). The role the media play is pivotal in assisting a president in achieving such a result because of its ability to increase the importance of issues influencing the attention of policy makers and the priorities of viewers. Although it is possible a president can focus media attention on the policies he wishes to pursue through his State of the Union addresses or by calling press conferences, his abilities in this regard are limited, and the media attention he receives is typically short lived (Edwards and Wood 1999, 328-29). High-profile events, on the other hand, are beneficial because they allow the president to gain focus on his agenda. This occurs because the event itself generates attention from the media without presidential intervention. Thus, the ability of crises to set the agenda and shift media and public attention provides another means for overcoming the constraints placed upon the president's ability to act unilaterally. Finally, Rudalevige finds support that a crisis increases the success of presidential unilateral power even if the policy process is centralized. A crisis allows little time to make decisions. As a result, “the president and other elected officials are under pressure to ‘do something’ about the problem at hand” (2002, 89, 148). Because swift action is necessary, presidents rely on in-house advice. As a result, the policy formation process is centralized, and the president receives deference to unilaterally establish policies to resolve the crisis. During a crisis, the president has greater opportunity to guide policy because the event helps him overcome the congressional and judicial obstacles that typically stand in his way.2 This affords the president greater discretion in acting unilaterally (Wildavsky 1966). It is possible the institutional make-up of the government will align so that the president will serve in an environment supportive of his policy decisions. It is also likely a president will have persuasive powers that enable him to gain a great deal of support for his policy agenda. An event with the right characteristics, however, enhances the president's ability to act unilaterally, regardless of the institutional make-up of government or his persuasive abilities.